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762
No. 2155

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FIVE VOLUMES)

EBNER GOLD MINING COMPANY (a Corporation),
Plaintiff in Error,

VS.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,
Defendant in Error.

VOLUME III.

(Pages 737 to 1104, Inclusive.)

Upon Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

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the District of Alaska, Division No. 1.

(Testimony of William M. Ebner.)

Q. Some lawyer drew it?

A. I don't remember whether a lawyer drew it or whether we drew it ourselves.

Q. (By Judge WINN.) Was it a contract?

A. It was a permission I gave him—it wasn't an agreement or [676] contract—it was more in the nature of a permission.

Q. To drive through the Cape Horn lode?

A. The Cape Horn #2 and the Cape Horn.

Q. Which is the Cape Horn #2—is that the claim lying to the southwest of the Cape Horn lode on this map? A. Yes, sir.

Q. And that is the claim on which the stamp-mill was to be built?

A. That I don't know—that is where the excavation for the stamp-mill is.

Q. Did you have any agreement about that, was that in your agreement?

A. I think it touches on that—I wouldn't be sure. We hadn't got that far. I don't think that is in there. He wanted to start a tunnel and I gave him the permission.

Q. Did you ever have any conversation with your attorneys or any one else about that?

A. I don't remember.

Q. You had regular attorneys here at that time?

A. Yes, sir.

Q. Was Mr. Bent here that summer?

A. 1909? I don't think so.

Q. He wasn't up here in 1909?

A. No, sir, not when I was here.

(Testimony of William M. Ebner.)

Q. Can you explain how it is that this suit was brought originally to eject us from the Cape Horn lode in the name of the Ebner Company—do you know anything about that?

A. I do and I don't.

Q. You don't know anything about what influenced your attorneys?

A. Well, my attorneys had instructions to protect the Ebner Gold Mining Company's interests. [677]

Q. And in doing that they brought this suit?

A. Yes, sir.

Q. And until you got here this time, you didn't discover that the suit had been brought in their name for part of your property?

A. I didn't know anything about that until I came here just a few days ago—a week or so.

Q. And the Cape Horn lode, the title to the Cape Horn lode, has never been in the new Ebner Company? A. No, sir.

(By Judge WINN.)

Q. I will ask you who has been acting as attorneys for the Ebner Gold Mining Company here for the past few years, especially since you went south, to California. A. Messrs. Winn & Burton.

Q. I will ask you if you did not give us authority as your attorney to take all actions and steps of every nature and kind to protect the properties of that company up there. A. Yes, sir.

Q. That is the agreement you had with it?

A. Yes, sir.

(Testimony of William M. Ebner.)

(By Mr. SHACKLEFORD.)

Q. I understand you cannot recollect the time, place or persons present when this agreement was drawn up? A. Which agreement was that?

Q. The agreement to allow Mr. Tripp to drive through the Cape Horn lode?

A. I don't remember the time or the place, but I think that Mr. Tripp and I drew that up between ourselves and had some one to typewrite it. [678]

Q. You don't know where it was?

A. I don't know whether it was—no, I do not.

Q. You don't know who typewrote it?

A. No, I don't even know that.

(By Judge WINN.)

Q. What about this permission you gave Mr. Bent?

A. I saw Mr. Bent in Seattle last summer and gave him just a verbal, oral permission to go on there.

Q. You are not kicking about it now and you are consenting to his going ahead and driving through there?

Objected to. Sustained.

(By Mr. SHACKLEFORD.)

Q. Did Mr. Bent come to you and make application for this permission?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, Mr. Bent came to me.

(Testimony of William M. Ebner.)

Q. When was this with reference to your conversation with Tripp?

A. That was after Tripp—I saw Bent last summer down in Seattle, during the month of July.

Q. You stated in your direct examination that the oral permission came first—the oral permission to Tripp?

A. Yes, but that was the year before this understanding with Tripp—that was in 1909.

Q. Before it was reduced to writing you had an oral understanding with Mr. Tripp?

A. Yes, sir.

Q. And then it was reduced to writing? [679]

A. Yes, sir.

Q. Where—here in Juneau?

A. Yes; here in Juneau.

Q. How soon after the oral understanding?

A. Some little time after he came and said he thought we had better. I said, “all right, you understand what we said—now get it down.”

Q. Now, is it not a fact that so far as anybody is concerned except yourselves, these parties have acted all along on the assumption that that was part of the Ebner property and you never gave them any notice of it otherwise? A. No, sir.

Witness excused.

Judge WINN.—I will recall Mr. Behrends.
[680]

**[Testimony of B. M. Behrends, for Plaintiff
(Recalled).]**

B. M. BEHREND'S recalled:

(By Judge WINN.)

Q. How long have you been acting as secretary of the Ebner Gold Mining Company?

A. I think since 1895, since the beginning of it.

Q. You saw the stock-book that I brought up here and offered in evidence in this case? A. Yes, sir.

Q. And the minute-book? A. Yes, sir.

Q. For the last year or so or for the last several years in whose possession have those books been?

A. In mine.

Q. Where did Mr. Ebner get them to-day?

A. He got them from me.

Q. I will ask you whether there is any understanding or agreement with any person or corporation whomsoever, passed by a board of directors of the Ebner Gold Mining Company or otherwise passed for the sale of the real estate and property that belongs to that company?

A. Not to my knowledge.

Q. You have been secretary and have kept the books and transactions pretty well of that company?

A. Yes, sir.

Q. And you have been also a director?

A. Yes, sir.

Q. If there had been any such contract made by the Ebner Gold Mining Company you would have been apt to know of the existence of such contract, wouldn't you? A. Yes, I think so. [681]

(Testimony of B. M. Behrends.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. Your duties as secretary are to keep track of the stock proceedings and affairs of the company?

A. Yes, sir.

Q. You audit the accounts of the company?

A. Yes, sir.

Q. When was the last time you audited the accounts? I will withdraw that. Has the Ebner Gold Mining Company any agreement whatsoever concerning anything with the California & Nevada Copper Company?

A. Not to my knowledge.

Witness excused.

Judge WINN.—We now offer in evidence these three photographs identified by Mr. Winter and been testified about certain stakes and locations both by Mr. Ebner and Mr. Webster.

By the COURT.—They will be admitted.

Judge WINN.—I will call Mr. Wells. [682]

[Testimony of Charles Wells, for Plaintiff.]

CHARLES WELLS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You have been living in and about Juneau for several years? A. Yes, sir.

Q. What has been your business principally?

A. Well, it is blacksmithing a good deal and prospecting a good deal.

(Testimony of Charles Wells.)

Q. You have been both the owner of mines and have been at work on mines belonging to other people during your stay here?

A. I have done all the work on the mines that the Alaska-Juneau own now for several years—assessment work.

Q. I will ask you if you are acquainted with what has been the going and regular wages paid for the last four or five or six years in Southeastern Alaska, in and about Juneau, in doing and performing assessment work upon mining property, answer yes or no.

A. I think I gave that evidence here about a year ago. I generally pay three dollars a day and board.

Mr. SHACKLEFORD.—We move to strike the answer of the witness.

Motion granted. Stricken.

Q. I asked you if you know? A. Yes, sir.

Q. I will ask you what it has been during that period of time?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and not the best evidence for the purposes of this case.

Objection overruled. Defendant allowed an exception.

A. Three dollars a day and board is what I generally pay and what a great many others pay.
[683]

Q. Well, has that been the going and market price for services of that kind?

(Testimony of Charles Wells.)

Same objection. Objection overruled. Defendant excepts.

A. Yes, sir, during that time.

Q. (By Mr. SHACKLEFORD.) What is it?

A. Three dollars a day and board.

Witness excused.

Judge WINN.—I think we will rest. We want to offer this map in evidence, Plaintiff's Exhibit "N." If we get any papers here that it is necessary to let counsel examine, if we desire at some future time to offer any evidence concerning such papers as I have indicated to your Honor, I would like to do it.

Recess until to-morrow—June 2, 1911, at 10 A. M.

June 2, 1911—Morning Session.

Mr. SHACKLEFORD.—We want to recall Mr. Tripp for further cross-examination before plaintiff closes.

Judge WINN.—In the amended complaint the only change I desire to make is in the description on page 2 of the Lotta lode claim, wherein we have a course marked as follows: Thence south $57^{\circ} 24'$ east—that should be west—150 ft. to the southeast centre end of the Lotta lode. It is a clerical error.

By the COURT.—You may make the change.

Judge WINN.—Since we have asked to dismiss the third cause of action set forth in the amended complaint pertaining to the Cape Horn lode claim, I move to strike from the answer of the defendant company in this case all that portion of [684] the answer which commences on page 21, as follows:

The defendant for answer to the third cause of action stated in the complaint admits, denies and alleges as follows: down to the prayer of the answer, for the reason that the whole answer is an answer to the stricken portion of the amended complaint—that is, it refers to the Cape Horn claim alone and has no place in the pleadings.

Mr. SHACKLEFORD.—We ask time to examine it.

By the COURT.—You will be given until two o'clock to examine it.

Judge WINN.—On page 2 of the reply in the 6th line on page 2 I desire to strike out right after the word Parish #2 and Cape Horn lode—strike out Cape Horn lode. (Allowed.)

On page 3, in conformity to the motion to dismiss our third cause of action in the amended complaint, I desire to move to strike out “and Cape Horn lode mining claims” and the word “two” and change the word claims to claim (allowed).

Page 3, seventh line, we wish to strike out right after Parish #2 as follows: and Cape Horn lode mining claims. (Motion allowed.)

And on the same line I want to strike the word “two.” (Allowed.)

And in the following line I want to change the word claims to claim. (Allowed.) And three lines below that the word “notices” I want to make it singular—notice. (Allowed.) On page 6, 14th line, I wish to strike out the word “and Cape Horn,” and following that is the word claims again—that

should be claim. (Allowed.) On page 7, 13th line, appears the words—and Cape Horn after Parish #2 and at the end of the next line the word “two.” (Stricken.)

Now, commencing at the top of page 14 is the reply matter to the affirmative matter which they set up in the answer pertaining to the Cape Horn claim. We wish to strike [685] out commencing at the top of page 14, in which it says, “Plaintiff replying to defendant’s answer to the third cause of action,” all of that down to on page 16 where it commences, “And further by the way of affirmative matter as a defense to the matters and things set forth in the amended and supplemental answer to the amended complaint herein, this plaintiff alleges.”

By the COURT.—That portion of the reply on page 14, 15 and 16 is stricken.

Judge WINN.—On page 17 third line the words “and Cape Horn.” (Stricken.) And insert right after it the Parish. The fact is, I should have had the Parish #1 instead of the Cape Horn all the way through this pleading; and on the next page, 18, commencing in the third line, right after the Parish #2 I desire to insert the name, “the Parish”—and strike out which is referred to in the complaint herein. (Allowed.) And the Cape Horn lode claim, commencing right before those blanks—I do not wish to fill in the blanks now and down to the word “plaintiff” in the first line below, the blanks.

By the COURT.—The word “this” goes out.

Judge WINN.—Yes, down to this plaintiff—con-

veyed, etc. I want to strike out after that and the Cape Horn lode claim, down to the word "conveyed"—the first word on the line.

By the COURT.—You leave the word "conveyed"?

Judge WINN.—Yes, sir; and down below about the 8th line from the bottom, right after Parish #2—the figure 2 is the beginning of the line. I desire to strike out "Cape Horn" there and insert "Parish." (Allowed.) In paragraph 5 on the following page we refer to the Cape Horn lode claim in [686] a way—the fifth line of paragraph 5 strike out the words "belonging to this plaintiff." (Allowed.) On the next page we have filled up those blanks—a tree three by four and on the last page, the third line from the bottom not including the prayer—strike "Cape Horn."

By the COURT.—The pleadings may be amended by erasure and interlineation on the files without filing new pleadings.

Judge WINN.—I understand Mr. Shackelford has asked to recall.

Mr. TRIPP.—I desire to announce to the Court at this time that we rest our case.

Mr. SHACKLEFORD.—I desire to recall Mr. Tripp for further cross-examination.

Judge WINN.—I object to the recalling of Mr. Tripp, for the reason that we have rested our case, and I think if they desire Mr. Tripp as a witness, they can put him on as their witness.

By the COURT.—Mr. Shackelford announcing

(Testimony of H. T. Tripp.)

that he desired to cross-examine him before you rested your case, the objection is overruled and you are allowed an exception. [687]

[Testimony of H. T. Tripp, for Plaintiff (Recalled—Further Cross-examination).]

Mr. TRIPP, recalled for further cross-examination.

(By Mr. SHACKLEFORD.)

Q. How much did you pay the men that were doing the assessment work in 1909 which you described in your direct examination yesterday?

Objected to as repetition. Objection overruled. Plaintiff allowed an exception.

A. I paid the men three dollars a day.

Q. Now, I understood you to say, also, on your cross-examination the other day that your work on the Ebner mine tunnel and in the vicinity of the two Cape Horn lode claims was done by you under the impression that all of those claims belonged to the Ebner Company. Is that true?

A. Belonged to the Ebner Company?

Q. Yes.

A. No, I don't think so. I don't believe I said that. I think I understood that they belonged to the California & Nevada Copper Company.

Q. I mean by that you did not understand at that time that they belonged to William M. Ebner personally?

Judge WINN.—I move that the answer about belonging to the California & Nevada Copper Company be stricken because I do not want the record to show

(Testimony of H. T. Tripp.)

that they are endeavoring to prove title to real property, etc., by oral testimony, especially against the record as it stands in this case.

Mr. SHACKLEFORD.—That is not the purpose of my question; of course the record title to the property, so far as the record title is concerned, is already in here and will control—this is a question as to Mr. Tripp's understanding of the situation.

Motion denied. Plaintiff allowed an exception.
[688]

A. I was working for some people that I supposed were the California & Nevada Copper Company, and it was my understanding that they had all of that ground or would have it—it was all under one consideration.

Judge WINN.—For the same reason, about the title to the property, we move to strike that answer.

Overruled. Plaintiff allowed an exception.

Q. I will ask you if it is not a fact that some time after you took charge of this property for the California & Nevada Copper Company you secured from William M. Ebner a written license or permit to cross the Cape Horn #2 and the Cape Horn lode claim.

A. Well, there was one particular claim that had been located, I think—I had an understanding first it came in as a mill-site but it was located by Mr. Ebner, so I know I knew at that time or thought I did and I was not quite sure about that particular claim and we had an agreement on that.

Q. Now, have you a copy of that agreement?

(Testimony of H. T. Tripp.)

A. Yes, sir.

Q. Have you it with you?

A. I have. (Witness produces paper.)

Q. Is that the only agreement you had with Mr. Ebner with reference to the driving of the tunnel?

A. Written agreement—I had a general talk—I went over the ground with him and we talked the matter over fully.

Q. This agreement has never been modified in any way, shape or form? A. Not that I know of.

Mr. SHACKLEFORD.—We ask leave to have the reporter copy the [689] agreement and return the same to Mr. Tripp, copy it into the record, and we offer the agreement.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial for any purpose in this case and does not tend to establish any title in any property—for the reason that it is not such an agreement as would be an agreement to convey and it is not proper cross-examination at this time to offer a paper of this nature in evidence, for the reason that it may open up the whole matter so far as we are concerned and compel us to put in a lot more evidence on some phases of the case.

Objection overruled. Plaintiff allowed an exception.

Mr. SHACKLEFORD.—(Reading:) “Juneau, Alaska, September 25, 1909. H. T. Tripp, Superintendent California & Nevada Copper Co., and F. L. Underwood, Juneau, Alaska. Dear Sirs:—In view of the fact that F. L. Underwood holds in escrow one

(Testimony of H. T. Tripp.)

certain deed conveying one Cape Horn and Eureka lode claim, upon which the assessment work for 1909 must be performed for the purpose of holding the same to comply with the law and from the further fact that the said F. L. Underwood has agreed to do such assessment work—I being the owner of one lode claim called Cape Horn #2 and the proper place for starting a long working tunnel, I make to you the following proposition: That all assessment work for these three claims, Cape Horn, Eureka and Cape Horn #2 be performed in starting this tunnel. I would further state that negotiations are now pending for the transfer of Cape Horn #2 to the said F. L. Underwood. It is my intention that in the final settlement of Cape Horn #2 it will be transferred to the said F. L. Underwood. Yours respectfully

WILLIAM M. EBNER.” [690]

Q. Now, an estimate was put by you of \$300 done on the tunnel started by you in 1909? A. Yes, sir.

Q. Does that include the work of approaching the tunnel and breaking off the face also?

A. It includes the cutting, clearing up the place and doing a certain amount of grading and road work—not the surveying or anything of that sort.

Q. The surveying too? A. No.

Q. No surveying? A. No.

Q. But it includes all the necessary work to approach the place, in addition to the rock work?

A. Yes, sir.

(By Judge WINN.)

Q. Did you board these men or pay for the board

(Testimony of H. T. Tripp.)

of them that did the work up there?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I boarded them at the mine.

Q. And paid them three dollars a day and boarded them?

A. No, I paid them three dollars a day—I calculate it would cost more than that really, but I paid them \$2.00 a day and boarded them.

Q. You counted the board in at one dollar a day?

A. Yes, sir.

Q. I don't believe I asked you this question when you were on the witness-stand before but probably you covered it—I will ask you if in your judgment the work, taking all the work [691] you did up there that you have testified concerning, if in your judgment, your opinion, these two Parish claims were benefited in the full amount of \$100 each by reason of the work you did there or caused to be done.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

By the COURT.—The object will be overruled on that ground.

A. I intended—it was my honest intention—to do the assessment work, to have enough done as the law required. I think I did, yes, sir; that was my intention.

Mr. SHACKLEFORD.—We move to strike the

(Testimony of H. T. Tripp.)

answer of the witness.

By the COURT.—The first part of the answer up to, “I think I did,” will be stricken as not responsive to the question.

Q. Now, Mr. Tripp, did these people go out and do the work themselves, just wherever they desired, or was that work directed by you?

A. Well, I was around with them and directing the work.

Q. Now, I will ask you, as a mining man, as to whether or not work would be of more or less value by reason of it being directed by someone who is conversant with that work than it would to allow someone who did not particularly understand mining, in opening up and developing a mine, to go ahead and do the work themselves?

Objected to as argumentative.

Objection sustained as argumentative and a matter of common knowledge. Plaintiff allowed an exception.

Witness excused.

Defendant rests. [692]

Mr. SHACKLEFORD.—We would like to give notice to the plaintiff in the case that we would like to have them produce a memorandum—as I understand it their witnesses on cross-examination were unable to locate the exact date they started to do the assessment work on the Parish #1. We give notice to them to produce the books of the company, to show the date when the work for 1909, the exact date when the work for 1910 which was claimed had been re-

sumed on the Parish #2. The books showing when your men first went on the Parish #2 claim in the fall of 1910.

Judge WINN.—I think we had that date almost certain in the evidence; if we can get an evidence as to the particular date we commenced work on that claim, we will get it. If I can find the date I will furnish them with it.

**[Motions to Strike Testimony of Hill et al., etc.
(Renewed).]**

Mr. HELLENTHAL.—Now, that the plaintiff has rested we now renew our motion to strike the testimony of Hill with reference to the conversations had with Nevins and Mr. McDonald, for the reason that the testimony tending to show the authority of Nevins or McDonald, or either of them, has not been produced, to make such statements binding on the Alaska-Juneau Company.

Judge WINN.—We resist the motion. Your Honor allowed Mr. Hill's testimony to stand for certain purposes regarding Nevins.

By the COURT.—That portion of the testimony of Mr. Hill concerning the statement of Nevins and the general conversation after assessment work had been done was stricken; that part of it concerning the conversation with McDonald in giving directions about how the assessment work should be done up there will remain. I don't remember any evidence except those—any other statements in evidence except those in [693] the general conversation regarding why he didn't tell him so and so when he went up there to survey.

Mr. HELLENTHAL.—The conversation I refer to is a conversation offered for the purpose of proving abandonment on the part of the Alaska-Juneau Company of the Oregon claim. It was at the time Mr. Hill went to survey the Colorado. Mr. McDonald told him something about leaving out the Oregon, but the purpose of the conversation at any rate was to show that the Alaska-Juneau had abandoned the property. Counsel at that time promised the Court that he would follow that testimony with competent testimony to prove that Nevins and McDonald had authority to abandon the property and the Court said the testimony might stand under the statement of counsel, and give him an opportunity to offer such proof. No testimony has been introduced and I move that any conversation had by Hill with McDonald or Nevins for the purpose of proving or that might tend to prove an abandonment of the property on the part of the Alaska-Juneau Company be stricken.

By the COURT.—The testimony as to Nevins will be stricken; that as to Joseph McDonald will stand.

Plaintiff allowed an exception as to the ruling striking the testimony as to Nevins.

Mr. HELLENTHAL.—I now make a motion to strike from the record the testimony of Graham or whoever it was with reference to conversations had with U. S. Marshal Lund for the same reason that counsel stated at that time he would connect Lund—it is with reference to the work on that tunnel; I don't know just what the testimony was now—for the purpose of showing that Lund had something to do with

(Testimony of Percy Pond.)

this company and they were prevented working there by Lund. Counsel didn't connect it up. Motion denied. Defendant excepts. [694]

Defense.

[Testimony of Percy Pond, for Defendant.]

PERCY POND, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

(It is conceded Mr. Pond is a photographer.)

Q. I will ask you if you went on the ground in controversy here at my request and at the request of the company with Mr. Stewart, one of the surveyors, and took some photographs? A. Yes, sir.

Q. I hand you this photograph and ask you if that is one of the photographs you took. A. Yes, sir.

Q. What is that a photograph of? (Counsel refers to exhibit 9.)

A. Mr. Stewart directed me to take a photograph showing this rock bluff here, which was adjacent to an open cut.

Q. That is on the first bench above Gold Creek or near there? A. Yes, sir, near there.

Q. On the right-hand side of the creek going up?

A. No, the left-hand side of the creek going up—yes, that is correct; the right-hand side of the creek going up.

Q. I will ask you if that is one of the photographs. (Counsel hands witness Defendant's Exhibit 10.)

A. Yes, sir, it is.

(Testimony of Percy Pond.)

Q. I will ask you about this picture "10" which I have just handed you—is that another view of the same?

A. That is taken from the opposite direction that the other was taken from.

Q. Who is the person standing on the brow of the hill there? A. Mr. Stewart.

Q. This place marked with a red X, what is that, with snow on it? [695]

A. That is an open cut.
(By Judge WINN.)

Q. This exhibit 9 of the defendant, you say that was taken with a view to showing what points, prominently?

A. To show this rock bluff adjacent to the open cut.

Q. The rock bluff on the left-hand side of the photograph as you look at it? A. Yes, sir.

Q. In this other exhibit of the defendant #10, what was that taken with a view to showing up prominently in the photograph?

A. Showing this open cut, the same one that is referred to in the other photograph.

Q. It was taken as a side view of the cut, was it?

A. It is a side view of the cut.

(By Mr. SHACKLEFORD.)

Q. That last picture was also taken for the purpose of showing the position that Stewart took on the ground at the time? A. That was his idea.

Witness excused. [696]

[Testimony of R. A. Kinzie, for Defendant.]

R. A. KINZIE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Robert A. Kinzie?

A. Yes, sir.

Q. Where do you reside?

A. Treadwell, Alaska.

Q. What is your business, trade, occupation or profession? A. Mining.

Q. What profession, if any, have you?

A. Mining.

Q. Mining engineer? A. Yes, sir.

Q. What if any relation do you sustain to the Alaska-Juneau Gold Mining Company?

A. I am the general superintendent.

Q. How long have you occupied that position?

A. Approximately six years.

Q. What, if any, relation did you sustain to that corporation prior to the time you became its general superintendent? A. Assistant superintendent.

Q. How long were you the assistant superintendent of that company?

A. From 1900 up to about 1905.

Q. What time in the year 1900?

A. I think it was the latter part of February.

Q. And you have then continuously acted as general superintendent or assistant superintendent at all times since? A. I have, yes, sir.

Q. As such assistant superintendent or general su-

(Testimony of R. A. Kinzie.)

perintendent, [697] what degree of familiarity did you have with the operations and business of the corporation?

A. I knew the details of the business.

Q. I now call your attention to a plat or map marked for identification, Defendant's Exhibit No. 7 and ask you to look at it? A. Yes, sir.

Q. Are you familiar with the matters and things delineated on that plat in a general way?

A. Yes, I am.

Q. You know in a general way the location of the Colorado lode claim? A. I do.

Q. Oregon lode claim? A. I do.

Q. The Canyon lode claim? A. I do.

Q. And the monuments and other things connected with the location of the Lotta lode claim?

A. Some of the monuments.

Q. And the Parish #2 as claimed to be located by the plaintiff company?

A. Some of the stakes of the Parish.

Q. The flume-line of the Alaska-Juneau Company as indicated on this plat—you are familiar with that?

A. Yes, I am.

Q. And the other matters and things generally, delineated on the plat? A. I am.

Q. Now, I will call your attention to the Oregon lode claim as located on this map and ask you when you were first on the ground covered by that claim?

Judge WINN.—We object to that question and any evidence or testimony with respect to this map, for the reason that [698] it has not been authenti-

(Testimony of R. A. Kinzie.)

cated, has not been shown to be drawn by anyone who is a surveyor; it has not been shown that the objects and things thereon are in reality as they are on the ground, and I think the map ought to have some authenticity before they testify regarding it—we object because there is no foundation laid.

By the COURT.—You expect to prove the map later?

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. In a general way the Oregon, Parish and Lotta and the Colorado and other lines and matters and things indicated on that plat are correctly delineated?

A. I think so; yes.

Same objection. No foundation laid. Objection overruled.

Plaintiff allowed an exception.

Q. When were you first upon the ground indicated upon this plat as being within the limits of the Oregon lode claim?

Judge WINN.—It is understood that any questions asked Mr. Kinzie concerning this map are objected to on the grounds I have already stated and I have an exception?

By the COURT.—Yes, sir.

A. I was there in the summer of 1900 or 1901. At this time I don't remember exactly. I can find out, though.

Q. You can find out? A. Yes, sir.

Q. Can you find out within an hour?

(Testimony of R. A. Kinzie.)

A. No, not without going across the bay.

Q. What, if anything, did you find upon the Oregon lode claim when you were first upon the ground in the way of quartz or other rock bearing values, in place? [699]

Judge WINN.—We especially object to that because Mr. Kinzie was not the locator of it. I don't know whether they are trying to prove an original discovery or not.

Objection overruled. Plaintiff allowed an exception.

A. Why, it was the first time I had been on the ground and going up the Basin we covered the ground as included in the Colorado, Wyoming, Oregon and Idaho claims. The work that we were doing at the time was just over the line from the Oregon and on the Colorado. At the time we took some samples—I have forgotten exactly at what point and then made a general *connaissance* up the creek as far as we could go on the ground included in the Oregon claim and also up the hill on the Wyoming and the Oregon and on the lower part of the Colorado. We went over the ground and determined as far as we could by looking at it the general line, the mineral zone passing through there and know we were trying at that time to determine the footwall of the main ore body.

Q. What did you find in the way of rock in place, bearing gold or other precious metals at that time?

A. Why, we found mineralized shist and quartz in place. We made no assays at the time, but we

(Testimony of R. A. Kinzie.)

thought it was mineral bearing, gold bearing.

Q. In your judgment as a mining engineer, was it gold bearing? A. Yes, sir.

Q. Where was that rock in place found by you at that time on the Oregon, with reference to the location of the Parish claim, as indicated on this plat, exhibit 7?

A. To the best of my recollection it was both on the south side and around the point. We went around the point, just above where the cabin, the Alaska-Juneau cabin, is now located—both on the north and south side of that point and [700] around the point.

Q. Please mark with a letter “a” on this plat the point as near as you can recall where you discovered that rock in place, of which you were speaking, bearing gold?

A. Why, it was about a point in here—

Q. Mark it with the letter “a.”

(Witness does so.)

Q. What kind of mineral did that rock carry in your judgment?

Judge WINN.—I object, being indefinite as to time when he made the discovery and indefinite as to which one of the Oregon claims he is intending this discovery for, whether the Corbus Oregon claim or the Datson Oregon claim.

Objection overruled. Plaintiff allowed an exception.

A. Why, the country there is a broken up shist containing iron pyrite and small quartz stringers—

(Testimony of R. A. Kinzie.)

it is a pyrite principally.

Q. What does it carry—gold?

A. Why, it does carry gold; sometimes less sometimes more.

Q. When were you next upon the ground within the Oregon location as indicated here on the map and made any discovery of rock in place, bearing gold or other precious metals?

A. Why, I was on the ground embraced in these four or five claims there a number of times each year afterwards. I wouldn't go to look for any particular discovery, assumed we had a discovery there in plain sight.

Q. Where was the ore in plain sight on the Oregon lode? I am not speaking now of the Colorado; I am speaking of the Oregon.

A. Where Gold Creek and Snowslide Gulch had cut through, giving a cross-section of the country rock. [701]

Q. Where is that with reference to the point marked "a" by you?

A. It is right in that general vicinity, both sides—you get a very good cross-section there on the north and south side of that point.

Q. That is the same ore you saw in place there in 1900 or 1901 whenever it was, when you were there the first time? A. It was, yes.

Q. Now, Mr. Kinzie, do you know the ground covered within the boundaries of the Parish #2 lode claim as platted upon this plat—have you been over that ground?

(Testimony of R. A. Kinzie.)

A. I know the south part or the south two-thirds of the claim very well.

Q. Southerly two-thirds?

A. Southerly two-thirds, yes; the northern part of the claim I am not so well acquainted with.

Q. Do you know where the Borean pit is?

A. I do, yes, sir.

Q. Have you ever been up through there?

A. I have not.

Q. I hand you here a photograph marked "9." Do you know what that is? A. Yes, I do.

Q. What is it? A. A part of the Borean pit.

Q. Are you familiar with the ground up there?

A. I am.

Q. I now call your attention to the picture marked Defendant's Exhibit "10" and ask you to look at that and see a point there indicated by an "X" marked on the right-hand side of the picture. Do you know what that is? A. Yes, I do. [702]

Q. What does that picture represent?

A. That represents a small open cut there.

Q. Are you familiar with the country around that pit there and around that cut? A. Yes.

Q. When did you see it last? A. Last Sunday.

Q. Did you make a thorough detailed examination of it? A. I did.

Q. How much of that country did you examine at that time?

A. I went over in detail the country south of what is known as Miller's Gulch—from Miller's Gulch down into Snowslide Gulch.

(Testimony of R. A. Kinzie.)

Q. How much of the Parish #2 does that take in?

A. I should say it would take in about a half.

Q. What half? A. The southeasterly half.

Q. Does it take in the Borean pit? A. It does.

Q. And surrounding country? A. It does.

Q. Did you examine that part of the Parish #2, the southerly half, with a view to determining whether there was any rock in place on that portion of the claim near the surface?

A. The entire southerly half?

Q. Yes. A. Yes.

Q. What did you find with reference to there being any rock in place anywhere near the surface, on the southerly half of the Parish #2?

A. The entire southerly half?

Q. Yes. [703]

A. Well, from Miller's Gulch on the southeast side to the canyon of Gold Creek the country is entirely covered by slide, the Gold Creek country, a cross-section of the country there, and, of course, the rock is in place at that point.

Q. I am speaking now of the portion of the Parish #2 lying between Gold Creek or the banks of Gold Creek and the southerly end line. What is the condition of that part of the claim with reference to there being any rock in place anywhere near the surface? A. The southerly end line?

Q. Yes; I mean along where the Borean pit is.

A. That is entirely covered by rock slide in the southeast portion, all the way—it is made up of two slides, one in the vicinity of Miller's Gulch and the

(Testimony of R. A. Kinzie.)

other coming from a point on the north side of Snow-slide Gulch.

Q. How about the Borean pit—any rock in place anywhere in that vicinity?

A. In the Borean pit itself?

Q. Yes. A. No, there is not.

Q. Do you know where that open cut is—the Borean pit? A. I do.

Q. Is there any rock in place in the neighborhood of that open cut? A. I didn't see any.

Q. Did you examine it? A. I did.

Q. Answer the question whether there is or not.

A. I don't think there is any bedrock within at least thirty or forty feet, if not more, of the bottom of the Borean pit itself. [704]

Judge WINN.—We move to strike out the last part of his answer.

Motion denied. Plaintiff allowed an exception.

Q. I now hand you this photograph marked "10" and call your attention to a rock shown on the right-hand side of the picture and ask you if you are familiar with that piece of rock there?

A. I am. I looked at that very carefully.

Q. Is that a boulder or rock in place?

A. That is a piece of slide from the cliff above and is part of the general slide.

Q. Part of the general slide?

A. Yes, part of the general slide.

Q. Is that in place or not? A. It is not in place.

Q. Is there, Mr. Kinzie, any rock in place in the Borean pit, at the Borean pit or within a radius of

(Testimony of R. A. Kinzie.)

50 or 100 feet on each side of the pit?

A. No, there is not—you mean to be seen?

Q. Yes. A. No, there is not.

Q. How deep, in your opinion, is the slide rock there?

A. The slide rock, starting at a point—starting at Miller's Gulch and following along Gold Creek until you come to a point almost in front of the two Alaska-Juneau tunnels and then going straight south to the side line of the Colorado or very likely a little southeast from that point—the country above is entirely covered by slide rock.

Q. To what depth?

A. It is varying from a few feet, practically nothing at that point to, I should judge, 50 to 80 feet.
[705]

Q. To what depth is the country covered by slide in the vicinity of the Borean pit, in your opinion?

Judge WINN.—I object to that—his opinion on a subject of that kind, without further investigation and no foundation being laid, is not an opinion that would be regarded as evidence. It is incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. From the topography of the country I would say it would vary from 50 to 80 feet.

Q. Miller's Gulch is not indicated on this plat, is it?

A. Miller's Gulch is here—Miller's Gulch comes into the Gold Creek at a point twenty or thirty feet,

(Testimony of R. A. Kinzie.)

maybe not that much, above the Alaska-Juneau dam—in fact, you may say it is right at the dam.

Q. What is the course of Miller's Gulch—easterly and westerly? A. Practically so; yes, sir.

Q. And the country to the west of Miller's Gulch is what you are speaking of?

A. Southeast of Miller's Gulch.

Q. Calling your attention to this plat, the upper part being east, what is the country you are speaking of with reference to Miller's Gulch?

A. Southeast of Miller's Gulch.

Q. Now, Mr. Kinzie, you recall the time when Datson located the Oregon in 1909 or 1910?

A. I do.

Q. How long after the Oregon was located by Mr. Datson, with reference to the time Datson located that, were you on the ground?

A. Two or three days after that—I don't remember exactly the [706] number of days—I was on the ground quite frequently then.

Q. What then did you find, if anything, in the way of a location notice? A. I found the notice.

Q. Posted and signed by Datson? A. Yes, sir.

Q. Where did you find it?

A. On a point above the rock cliff, almost due east from the Alaska-Juneau cabin.

Q. Within the boundaries of the Oregon claim as platted here? A. It was.

Q. I now direct your attention to a plat marked for identification, Defendant's Exhibit "11" (the map is so marked), and ask you if you know what

(Testimony of R. A. Kinzie.)

that is? A. I do; yes, sir.

Q. What is it?

Judge WINN.—I object to the question. There is no foundation laid for the witness to answer the question.

Objection overruled. Plaintiff allowed an exception.

A. It is a map showing the outline of the property belonging to the Alaska-Juneau Gold Mining Company and the Ebner Gold Mining Company and the Dora group and the William Ebner property.

Q. How is the property of the Alaska-Juneau Gold Mining Company indicated—by what color?

Judge WINN.—We make the same objection—no foundation laid for the witness to answer the question. The map has not been authenticated and the witness has not qualified as a surveyor and has not testified concerning any personal knowledge as to the data which he is about to testify concerning.

Objection overruled. Plaintiff excepts. [707]

Judge WINN.—And the same objection to each one of these questions concerning this map.

Objection overruled and exception allowed plaintiff.

A. The Alaska-Juneau property is shown in pink, the pink border—I should say it was pink.

Q. How is the property of the Ebner Gold Mining Company indicated?

A. The green includes the property of the Ebner Gold Mining Company and the Dora group.

Q. Will you kindly take your lead pencil and mark

(Testimony of R. A. Kinzie.)

out the property of the Ebner Gold Mining Company with that lead pencil so it will show what is the property of the Ebner Gold Mining Company independent of the Dora group?

(Witness does so.)

Q. Mark that lead pencil line with the letter "a."

(Witness does so.)

Q. Now, what portion of the property there marked in green belongs to the Ebner Gold Mining Company with reference to the lead pencil mark you have just drawn marked with the letter a.

A. All the part in green to the east of the lead pencil line belongs to the Ebner Gold Mining Company, as far as I know.

Q. The other belongs to other people?

A. The other belongs to other people.

Q. How many patented claims has the Alaska-Juneau got up there?

A. Thirty-one, I believe it is.

Q. Do you know how many unpatented?

A. We have now about fourteen or fifteen—we had eleven—have fifteen now.

Q. Unpatented? A. Yes, sir.

Q. And all the patented and unpatented are indicated by the [708] pink color on the map there?

A. No; there are some claims that have been located since, but most of the property of the Alaska-Juneau Company is shown in pink colors.

Q. How long has the Alaska-Juneau property been operated?

A. As the Alaska-Juneau Company?

(Testimony of R. A. Kinzie.)

Q. Yes.

A. I am not positive, but I think the company was organized in 1895 or 6.

Q. The property had been operated before that?

A. Yes, it had been operated for a considerable period before that.

Q. Now, what, if anything, in the way of a stamp-mill is there on this property?

A. At present there are two stamp-mills, the thirty-stamp mill and the small experimental five-stamp mill at the lower tunnel; they are situated in Silver Bow Basin.

Q. Is that five-stamp mill indicated on this map?

A. No, it is not.

Q. Will you please mark with a letter "B" the point on that map where that five-stamp mill is, approximately?

(Witness does so.)

Q. When was that thirty-stamp mill built? Was that constructed when you came here?

A. It was; yes, sir.

Q. When was the five-stamp mill built?

A. The five-stamp mill was originally Archie Cameron's mill and was reconstructed and moved to the mouth of the lower tunnel about six years ago.

Judge WINN.—Do I understand that Mr. Kinzie was here at the time this last mill was built?

Mr. SHACKLEFORD.—Yes, when it was reconstructed six years ago. [709]

Q. That was done under your supervision?

A. Yes, sir, it was.

(Testimony of R. A. Kinzie.)

Q. Now, what plan of development has the Alaska-Juneau Company been working on ever since you came to the country in 1900 and formed a connection with the company as assistant superintendent? State the plan fully, in your own way.

Judge WINN.—I object to the question at the present time as incompetent, irrelevant and immaterial. It doesn't tend to prove any of the issues as framed under the pleadings.

By the COURT.—I understand he is simply showing the carrying to completion of the plan according to the pleadings.

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. The general plan was to thoroughly prospect and sample the ore that the company owns in Silver Bow Basin and both the 30 and the 5-stamp mill have been used for that purpose practically for the last ten or eleven years. Basing our calculations upon the results of these mills, we found out that it was imperative that a mill should be built that would give us a longer working season. In the Basin we have a season there of about five months, sometimes a little more and sometimes a little less, and the general plan as outlined was to drive a tunnel—

Q. When was this plan outlined?

A. That plan was outlined in a general way before I arrived.

Judge WINN.—We object to that and move it be stricken. He is testifying now as to what the in-

(Testimony of R. A. Kinzie.)

tention of somebody was before he came here.

By the COURT.—You may state if there has been anything done in connection with the handling of the property to show that such a plan had been adopted before you came. [710]

Mr. HELLENTHAL.—I am asking the plan under which he worked when he came.

Q. Do not testify in regard to what you were told with reference to the plans—merely what you know they were at the time you came here.

A. That was the plan as I am giving it to you.

Q. Go on.

A. And for this purpose we acquired the property shown in the southerly part, the southwesterly part of the general group in the Silver Bow Basin and on the divide, dividing the Basin of Gold Creek from Silver Bow Basin, also the claims connecting the Basin claims with the shore of Gastineau Channel.

Q. I want the entire plan of development that the company was working under at the time you came here and has been working under since—the plan has not been changed?

A. The plan has not been changed in the main details.

Q. Tell what that plan was.

A. And before some of the property now owned by the company was acquired we had started the driving of four crosscut tunnels in the basin proper.

Q. When you speak of the Basin—the Silver Bow Basin—where is that with reference to the Alaska-Juneau stamp-mill?

(Testimony of R. A. Kinzie.)

A. The stamp-mill is in Silver Bow Basin—on the southerly side of Silver Bow Basin.

Q. Go on.

A. These tunnels have been driven so that they have crosscut to what is known as the first slate foot-wall of the ore zone.

Q. You are testifying to the development you did?

A. Yes, sir. [711]

Q. I want you to state to the Court in the shortest way you can the plan under which the Alaska-Juneau Company was operating at the time you came here, where, if any place, they expected to place their mill, how they intended to operate it, how they intended to get the ore there and how they intended to propel that mill.

Judge WINN.—We object to that; it would be hearsay, and we think it is incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The plan in a general way, was to develop the ore on the southerly side of Silver Bow Basin, driving a tunnel from the shore of Gastineau Channel to connect with the bottom of our workings in Silver Bow Basin and build a mill on the shore of Gastineau Channel to treat the ore mined in the Basin.

Q. How is that mill indicated on this plat?

A. It is indicated by a rectangular piece.

Q. How is it marked?

A. Proposed 200-stamp mill.

Q. What is the size of the mill you intended to

(Testimony of R. A. Kinzie.)

build? A. 200 stamps.

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—I understand that counsel will follow this up by showing that something has been done?

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. Will you indicate on this map the point from which you intended to drive the tunnel and tap the ore bodies on Silver Bow Basin—is that the portal?

A. Yes, that would be the portal.

Same objection. Overruled. Plaintiff excepts.
[712]

Q. The portal of the tunnel is situated on what claim? A. The Colorado.

Q. And is marked on this map with the word tunnel? A. It is; yes, sir.

Q. Where, according to your plan, is that tunnel to be driven to?

A. It is to be driven under the ore body in Silver Bow Basin.

Q. What is the size of the tunnel?

A. The tunnel would be an 8x12.

Q. How did you intend to get the ore from the portal of the tunnel to the stamp-mill on the beach?

A. Electric haulage.

Q. Over what?

A. Over a tram road from the main raise which would be at the face of the main tunnel.

(Testimony of R. A. Kinzie.)

Q. Through the tunnel?

A. Through the tunnel and then over a tramway from the portal of the tunnel, immediately above the mill.

Q. How is that indicated on the map—the route of that tramway?

A. That is indicated by a double line marked proposed tram and flume—proposed flume and tram.

Q. Where did you intend to get the power from to operate the stamp-mill on the beach?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The water-power to be used—we proposed to take it from Gold Creek.

Q. At what point?

A. At a point indicated by the word dam on this map.

Q. On what claim is that dam?

A. The dam is on the Oregon.

Q. How was it to be conveyed from that point to where you [713] intended to use it?

A. By a flume.

Q. Along what route?

A. By the route indicated by the double line marked proposed flume and tram.

Q. How much head would that give you at the mill? A. Between 420 and 450 feet.

Q. That is the plan, as I understand now, by which the company was working at the time of your arrival in 1900?

Objected to as incompetent, irrelevant and imma-

(Testimony of R. A. Kinzie.)

terial and hearsay.

Objection overruled. Plaintiff allowed an exception.

A. It was, yes.

Q. Has that plan ever been changed?

A. Only in minor details.

Q. The general plan?

A. The general plan is the same.

Q. Now, in order to carry out that plan what, if anything, has the Alaska-Juneau Gold Mining Company done since your arrival—first, in the way of development work on the property—first, I will ask you what is the character of the rock with reference to being high grade or low grade?

A. It is a low-grade rock.

Q. In order to work that rock, can that rock be worked to advantage with a small mill?

A. No, sir; it cannot.

Q. Can it be worked to advantage running a mill five months in the year? A. No, it cannot.

Q. How large a mill is necessary in order to work that mine to advantage? [714]

A. I should say the minimum sized mill would be 150 to 200 stamps anyway. I think 150 would be too small.

Q. Now, what have you done in the way of development work in the mine in carrying out the plan and scheme you have indicated in order to prepare the mine for the erection and operation of a 200-stamp mill?

A. The mine has been developed by four cross-cut

(Testimony of R. A. Kinzie.)

tunnels, together with drifts and raises from same. These tunnels have developed a block of ore divided into three layers of about close to 3,000 feet in length.

Q. How wide?

A. The belts of pay ore varying from 47 to 160—I have forgotten the exact size of the footwall belt; and this ore has been thoroughly sampled by means of open pits and short tunnels on the surface, the sampling being done by mill runs; the section shown by the lower tunnels has been sampled by means of the five-stamp mill and for the last two years by means of our thirty-stamp mill.

Q. How has this work of development been carried on with reference to having been continuous or otherwise, since your arrival here in 1900?

A. It has been continuous.

Q. What is the condition, the stage of development work in the Alaska-Juneau mines at the present time, with reference to the ability of the mine to supply ore for a 200-stamp mill?

A. There is no doubt at all about the ability of the mine to supply the requisite ore for a 200-stamp mill.

Q. At this present stage of development, can the mine be worked to advantage unless such a mill is built? [715]

A. No, it cannot be worked at all as a commercial proposition.

Q. How much money has the Alaska-Juneau Gold Mining Company expended in the development of its property and in getting the ore blocked out preparatory to the erection of the 200-stamp mill?

(Testimony of R. A. Kinzie.)

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Since I have had anything to do with the mine or starting with the year 1900, I have expended, not including the work that was done on the lower water right, about \$530,000.

By the COURT.—Not including what?

A. The work done last year on the water right, in regard to the litigation—

Q. When did your development work reach the stage where you had to develop—if at all—to get ready for the erection of a mill,—as to time?

A. Why, we started five years ago to drive what would be known, what you might consider as, the Silver Bow Basin end of this main tunnel scheme—it is known as our lower pit tunnel.

Q. Five years ago?

A. No, that tunnel was started about—it will be seven years ago.

Q. How far did you drive it?

A. That tunnel has now been driven up to what is known as the Silver Bow fork—it is a distance of 1,086 feet, I think, is the total length.

Q. From where?

A. From the lower edge of our property in Silver Bow basin to what is known—to where it intersects the main fork known as the Silver Bow fork.

Q. How far is the lower end of the tunnel from where your [716] thirty-stamp mill is situated?

(Testimony of R. A. Kinzie.)

A. The lower end of the tunnel? It would be about 250 or 300 feet.

Q. I mean, now, the further end of the tunnel—how far this way is it from the stamp-mill?

A. The lower end of the tunnel is right about the location of the five-stamp mill.

Q. Where is the upper end of the tunnel?

A. The tunnel is a crosscut tunnel.

Q. How long is it?

A. Ten hundred and eighty-six feet from that point. I can't be correct to the foot.

Q. When was it that your tunnel work had reached a stage that the erection of the 200-stamp mill became necessary, if at all?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. Last year was the first time that we considered that the tunnel work had reached a stage where it would be advisable to take up a water right, so that we could show a continuous use of the water.

Q. Now, what would you say last year with reference to that mine being in condition to run the mill?

A. The mine has been in condition with the exception of these tunnels and assessment work, I should say, the last two or three years.

Q. Is there any other feasible or practical place where you can erect the 200-stamp mill except at the point indicated on this plat?

Objected to as incompetent, irrelevant and immaterial.

Q. (Continuing.) So as to mill the ores mined

(Testimony of R. A. Kinzie.)

from the Alaska-Juneau mines? [717]

Objection overruled. Plaintiff allowed an exception.

A. We consider that the most practical and feasible place.

Q. What are the peculiar advantages of the situation of the mill on the beach at that place over a mill situated elsewhere?

A. Why, there are numerous advantages. In the first place, during the summer months you get the benefit of water power from Gold Creek, and in the winter months you are in close proximity to salt water, which can be pumped to be used as battery water, and also it is closer to the electric source of supply if you bring it in, and if you do not bring it in, the fuel can be landed at the power station, to the mill itself and the main, of course, or principal feature of all, you get an all year service, where at the Basin you get a 5 or 5½ months' service.

Q. Is it feasible to erect a mill in the Basin, a large mill, to operate a large mill? A. The year around?

Q. Yes.

A. No, it is not.

Q. Is it a feasible scheme to operate it a part of the year?

A. Yes; you can erect a mill there and operate it a part of the year.

Q. As a commercial proposition?

A. No, not as a commercial proposition.

Q. Would the milling and mining of the ore pay if conveyed to your mill on the beach in accordance

(Testimony of R. A. Kinzie.)

with your plan, and there milled?

Same objection, and as leading and suggestive.

Objection overruled. Plaintiff allowed an exception. [718]

A. I think it will; yes.

Q. Could it be made to pay according to any other plan that you know of?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. No, I don't know of any other plan.

Q. In order to operate this mill, where is it necessary that you should get your power?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The power will have to be taken from Gold Creek; that is the only available water-power.

Q. Where have you got to take it, in order to get it to the mill at all, how far up the creek have you got to go?

A. Well, we have to go at least as high as the point we are now, to avoid a great deal of extra expense.

Q. At least as high as the point which is marked here as your dam? A. Yes, sir.

Q. The point of diversion? A. Yes, sir.

Q. Now, explain to the Court why you have to go that far up in order to get to the beach?

A. The flume that will convey the water from Gold Creek passes over a gap which is back of the town of Juneau.

Q. A gap or ridge?

(Testimony of R. A. Kinzie.)

A. It is a ridge, with a gap in it. Now, as it is, even with our present location, it would require quite a large cut at that point, and if we dropped lower down, we would lose, not only the head and power that the water would give us, but [719] it would entail the additional expense of driving a tunnel through heavy slide rock.

Q. How far would the tunnel have to be driven through slide rock if you dropped down the creek?

A. How far down the creek, if at all? Well, there would be a tunnel there three or four hundred feet long.

Q. What is the character of the rock you would have to go through?

A. Well, the rock is a hard dioritic rock that has been broken up considerable, which would mean that rock in place, in the strict sense of the word, would be much easier to drive a tunnel—I think a tunnel through that point would have to be heavily timbered to maintain it at all.

Q. What would it be, with reference to being expensive or otherwise, to drive it?

A. It would be very expensive.

Q. How about its maintenance—would it be expensive or otherwise?

A. It would be expensive to maintain, also.

Q. In driving a 300-foot tunnel, how far down the creek would you be able to put your dam?

A. Along the line of the creek?

Q. Yes. A. A very short distance.

Q. How short a distance?

(Testimony of R. A. Kinzie.)

A. You couldn't go down the creek more than—well, if you dropped thirty or forty feet down the creek you would be increasing the depth considerably here.

Q. Suppose you dropped five hundred feet down the creek?

A. The scheme wouldn't be feasible at all. [720]

Q. The scheme wouldn't be feasible? A. No.

Q. Would it be feasible at all if you dropped down 100 feet? A. No, it would not.

Q. You are familiar with the grade as established on this map—the flume-line grade—in a general way? A. In a general way; yes.

Q. Could that grade be changed materially and the water conveyed in accordance with your plan?

Judge WINN.—We object as incompetent, irrelevant and immaterial and does not prove or disprove any of the issues in this case.

Objection overruled. Plaintiff allowed an exception.

A. No, it cannot be changed and kept the same.

Q. Could the course or direction of the flume be altered materially and the water conveyed in accordance with your plans at the point where it is to be used? A. No, it could not.

Q. Do you know where the Parish #2 is situated?

A. I do.

Q. Could the water be diverted from Gold Creek and used by you in driving the mill on the beach for power purposes and other purposes, without crossing the ground as claimed to be embraced within the

(Testimony of R. A. Kinzie.)

Parish #2, in the manner indicated on your plat?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. It could not be done.

Q. It could not be done? A. No. [721]

Q. Now, Mr. Kinzie, I will ask you what you did about July or August of 1910, looking towards the appropriation and diversion of the waters of Gold Creek, what was the first step you took in accordance with the plan outlined by you?

A. Well, the first visible step on the ground was the location of the notice.

Q. What, if anything, did you do before that?

A. We had been on the ground—that is, I had been on the ground, and as soon as Mr. Bradley arrived, I went over the plan with him and we determined the exact point where we wished to take out the water.

Q. Who is Mr. Bradley?

A. The president and consulting engineer of the Alaska-Juneau Company.

Q. What did you and Mr. Bradley do?

A. We then determined the point at which the diversion was to be made and the location was to be made, and Mr. Mulligan was sent up to make the location.

Q. That was what year? A. That was in 1910.

Q. Was this point determined upon by you in accordance with the plan that had been previously followed or was it a divergence from that plan?

(Testimony of R. A. Kinzie.)

A. No, it was not.

Objected to as incompetent, irrelevant and immaterial and leading and suggestive. Objection sustained.

Q. How did that point of diversion as settled upon by you and Mr. Bradley in 1910—where was it with reference to the place at which you intended to divert the water under the plan of the proposed scheme you have been talking about? [722]

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. It is the point at which we determined to take the water from Gold Creek.

Q. In accordance with the general scheme?

A. In accordance with the general scheme; yes.

Q. How did you determine upon the exact point at this time, in 1910—what did you use, what data did you use?

A. It was determined from maps in our office.

Q. What maps, what kind of maps—have you topographical maps of that country?

A. Yes, the particular map that he was given his instructions from was a topographical map of the United States Geological Survey.

Q. Have you the map you used at that time?

A. Yes, sir.

Q. Have you it here?

A. Yes, sir, I have. (Witness produces the map.)

Q. When was it you determined to divert the

(Testimony of R. A. Kinzie.)

water at the point indicated from this topographical map you have produced? You said it was in 1910, but I want to *know month* it was.

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The month of July.

Q. That having been determined, what was your next step—what did you do?

A. Mr. Mulligan—L. D. Mulligan—was sent up to make the location. I might say that that map was used to illustrate and show Mr. Mulligan where he was to go—we had been using it in conversation regarding the matter. [723]

Q. Does this map show the topographical condition of the country up about Gold Creek, the place of your intended mill in Silver Bow Basin and other localities about there? A. It does.

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Objection overruled. Plaintiff allowed an exception.

(The map is marked Defendant's Exhibit #12 for identification.)

Q. The map I referred to in my last question is the map marked for identification Defendant's Exhibit #12—that is the topographical map of that section of the country? A. Yes, sir.

Same objection. Objection overruled. Plaintiff allowed an exception.

By the COURT.—I understand you to say the

(Testimony of R. A. Kinzie.)

point was marked on there in giving this man his instructions.

A. Yes, sir. It is a topographical map; it is not a geological map.

Q. Who is Mulligan?

A. Mulligan was an employee of the Alaska Treadwell Company.

Q. What are his initials? A. L. D.

Q. What is the date he was sent up there to locate the water? A. August first.

Q. Where was he told to go?

A. He was given the directions. I have forgotten the exact words.

Q. On what claim was he directed to post the notice? A. On the Oregon claim. [724]

Q. Did you see the notice posted by Mr. Mulligan afterwards? A. I did.

Q. When?

A. It was within two or three days afterwards.

Afternoon Session.

Q. I will ask you to explain to the Court just how you happened to instruct Mr. Mulligan to place the location notice at the place it was originally placed on the creek.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The measurement was taken from a patent plat of the Harris mining district in our office and the distance was measured from the compressor plant to

(Testimony of R. A. Kinzie.)

the side line of the claim as shown on that patent and sufficient room allowed to have the notice well over the side line.

Judge WINN.—We move to strike that out—that is not the best evidence, as tending to prove the side lines of the Lotta lode claim.

By the COURT.—It is not the best evidence for that purpose.

Mr. SHACKLEFORD.—I am not introducing it for making the actual position of the Lotta, but introducing it for the purpose of showing just how it happened to be on what the plaintiffs claim to be the Lotta patented ground.

By the COURT.—The motion will be denied. It will not be considered for any purpose of fixing the Lotta line, only as it bears on the conduct of this witness in attempting to avoid the Lotta claim as he understood it.

Plaintiff allowed an exception to the ruling.

Q. This plat that you have in your office—explain to the Court how that is made up and how the improvements were [725] placed on the plat from time to time.

Objected to as not the best evidence. Objection sustained.

Q. Now, did you have Mr. Case take some pictures of the workings on this Gold Creek water right?

A. I did; yes, sir.

Q. What date were they taken?

A. The morning of October 4th.

Q. I will hand you a picture, which I will ask the

(Testimony of R. A. Kinzie.)

stenographer to mark for identification Defendant's Exhibit #12 (it is so marked), and ask you if that is a correct representation of the grade line on the lower end of that right of way, on October 4, 1910.

A. It is; yes.

Judge WINN.—I shall object to this unless Mr. Kinzie knows of his own knowledge when this picture was taken, because the date becomes material.

Q. Did you instruct Mr. Case to take the pictures?

A. I was there when the picture was taken.

Q. What date was it taken?

A. The morning of October fourth.

Judge WINN.—If Mr. Kinzie was there I have no objection.

Q. Explain to the Court the position of the two portals as they appear in the right-hand end of that picture.

A. The two openings shown about the centre of the photograph show the mouths of two tunnels that were driven into the hill to carry the flume-line when completed.

Q. A tunnel was necessary for the flume at that point for what reason?

A. For the reason that it was impracticable to construct an open flume-line across Snowslide Gulch on account of the [726] snowslides that occur every winter—snowslides would take out any structure of the sort that might be built there.

Q. When was the upper, the tunnel showing the upper portal there, driven—you know, don't you?

A. Yes. The tunnel was started, if I remember

(Testimony of R. A. Kinzie.)

correctly, on September tenth, the upper tunnel.

Q. When was the lower portal commenced, do you remember?

A. No; that was some ten days or two weeks later. I don't remember exactly.

Q. The grade line shown on this picture is the present grade line of the Alaska-Juneau flume?

A. Yes, sir.

Q. I will hand you a picture which I will ask to be marked for identification Defendant's Exhibit #13. I will withdraw that at this time. Mr. Hellenenthal desires to ask you some questions.

(By Mr. HELLENTHAL.)

Q. You have testified that in determining upon the point you wanted that notice posted, you used the map offered in evidence, the topographical map, and I understand you also used the patent plats of the adjoining claims to the Oregon.

Judge WINN.—We object to that; they couldn't prove the boundaries of the Oregon claim in this manner, what the patent maps and plats show.

By the COURT.—The only effect this evidence can have is on the good faith of the witness. These patent plats are the best evidence, and so far as undertaking to fix the boundary line of the Lotta, the evidence will not be considered, but as going to the good faith of the witness in the directions given to the man who located the water, it may be admitted. Plaintiff allowed an exception to the ruling. [727]

A. I did; yes, sir.

Q. How did you determine upon the southerly side

(Testimony of R. A. Kinzie.)

line of the Lotta? How did you determine upon your point of diversion, how did you measure it, how did you figure it out where your point of diversion should be from your plats, that is, the short way?

Mr. HELLENTHAL.—This is offered merely to show how Mr. Kinzie determined upon the point where he made his diversion of the water right.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The plat used was a plat compiled from the records in the surveyor general's office and we took a point at which the stairs led down to Gold Creek in front of the new Ebner mill, and measured along the course of Gold Creek to the southwesterly side line of the Lotta as shown on that plat; we then allowed a sufficient distance for a man who was not accustomed to measuring beyond it to be sure we were over the line and gave him that point to post his notice.

Judge WINN.—We demand for our inspection and the cross-examination of the witness the production of the map he has referred to in his testimony.

Q. What kind of a map was that?

A. The map actually used is a large plat. We could bring over a small scale map showing the same thing.

By the COURT.—You can reduce the size?

A. Yes, sir.

By the COURT.—Bring it over.

(Testimony of R. A. Kinzie.)

The WITNESS.—I think we have one here,—we have one of the maps showing that. [728]

Q. What was the next thing you did after having the notice posted in the way of diverting the waters of Gold Creek under that notice?

A. A man was sent up.

Q. When?

A. The man was sent up on August first.

Q. Who was the man? A. O. M. Harry

Q. And what was he sent up there for?

A. He was sent up to prepare a place for the men working on the grade to live and to select a place for a cabin to be built and to start the preliminary work of the grade for a flume-line.

Q. When did he commence work on that?

A. He started August first—he went up there August first.

Q. When were you on the ground—were you on the ground the first of August? A. No, I was not.

Q. When were you on the ground?

A. I am rather doubtful about that—whether it was the third or sixth; it was either one of those dates—of August.

Q. When you came up there, what had Harry been doing, if anything?

A. Harry had selected a place for a house—he had cleared and brushed away there, and the lumber was on the way up and when I went up that day he had been up the creek to a point, I should say, 100 to 150 feet below the location to ice—

Judge WINN.—We object to this as hearsay evi-

(Testimony of R. A. Kinzie.)

dence; he was not there and could only know it by Harry telling him.

Mr. SHACKLEFORD.—I am asking him for the evidences on the ground. [729]

By the COURT.—The objection will be overruled. Confine your answer to what you found on the ground and the line of work evidently done.

Q. Tell what you saw.

A. The work I saw was a cutting of the brush at the point where the cabin was afterwards built—a trail was built up to a point—from the old dump of the Borean pit to a point just above the present grade of our flume-line, and the trail had been started from that point around a cliff shown in Gold Creek.

Q. Were you up at the point where the water was afterwards diverted and where the notice was posted?

A. I was there later in the day; yes.

Q. What was done there, if anything?

A. The work that had been done there—there had been some old sluice-boxes that had been used, had been taken out and part of the water was turned on—the water had been turned on to a bench, taken out of Gold Creek and turned on to this bench and part of the bench sluiced off, that is, it was not dirt; it was gravel and stuff.

Q. What was that sluicing for, what kind of work was it?

A. Why, under the instructions that is the work he was to do, prepare for the flume-line along that point, so the rock men could go to work.

Q. That was either the third or sixth of August,

(Testimony of R. A. Kinzie.)

you are not sure which? A. Yes, sir.

Q. Have you any data by which you can refresh your memory so as to determine later on what the date was?

A. I thought I had. I might find it yet.

Q. What did you do with reference to continuing the work of [730] carrying out this plan at that time, during the month of August. First, when you were on the ground on the third or sixth of August, was there anyone else on that ground in possession of it or around there occupying it except Harry?

A. I saw no one.

Q. Had there been anybody else there would you have seen them?

A. If they were in that vicinity I certainly would have seen them.

Q. I am speaking of the ground covered by the Oregon claim. Did you find anybody on this ground?

A. No; I was up and down Gold Creek—there was a short gap below the falls that I couldn't get up at times—and I saw no one on the ground.

Q. Was there any habitation, building, cabin or anything else there on the ground covered by the Oregon or Parish lode claims described in this exhibit #7 for identification?

A. Nothing below the Ebner compressor building.

Q. Nothing below the Ebner compressor building?

A. No.

Q. You heard the testimony of Mr. Ebner that they built a blacksmith-shop at one time on the Par-

(Testimony of R. A. Kinzie.)

ish #2? A. I did.

Q. Was that there at that time?

A. I didn't see it.

Q. Would you have seen it if it had been there?

A. I think I would—in fact, I know I would if it had been in that vicinity.

Q. Was there any other building or buildings there?

A. No, the only structure of any kind whatever was a tower that was built—well, I should say on the map the horizontal [731] projection would be about 200 feet due east of the present cabin. I understand it is one of Perseverance towers.

Q. That wasn't a habitation? A. No.

Q. There wasn't anybody living in that tower?

A. No, sir, it was a bolted tower—that is the only structure of any kind that I saw on the ground at that time.

By the COURT.—200 feet east of your cabin?

A. Of the Alaska-Juneau cabin.

Q. When were you on the ground next?

A. Well, I was on there at intervals of perhaps four or five days—sometimes down at the cabin and sometimes up Snowslide Gulch; sometimes further up the creek.

Q. Did you keep anyone on the ground on that flume grade during that time?

A. O. M. Harry was at work continuously on that.

Q. Continuously? A. Yes, sir.

Q. When you say at work continuously, what was the work?

(Testimony of R. A. Kinzie.)

A. He had cleaned off the bench—first, he had built this trail coming down exactly where our dam is at the present time and he had cleaned that rock bench off there, cleaning dirt and slide rock that had come down the hill so it left it bare for what ties were necessary to tie the flume, and on this end he had constructed the steps, cutting steps in up to the grade of our upper tunnel and had started to grade along a trail, so the surveyors could get along that point.

Q. That trail, you say, he built at that time was along the flume grade at the point where your present dam is?

Judge WINN.—We object to all this evidence for the reason [732] that it is not the best evidence. I think they ought to have Harry here to testify so we can cross-examine him.

Objection overruled. Plaintiff allowed an exception.

Q. Did you see this trail?

A. Yes, I saw him at work on it.

Q. Did you see the trail when completed?

A. I did. I went over it a number of times.

Q. Where did it lie—the trail?

A. The trail came up north of the cabin, up what is known as the dump from the old Borean pit and came up the present flume grade—not the present flume grade, just above the present flume grade, and then continued due north to a point; there is a gully—I don't know the name of it—and there are two branches, one branch started from that point up the hill and around the cliff and down to the present

(Testimony of R. A. Kinzie.)

site of the Alaska-Juneau dam.

Q. How did the grade run with reference to the flume-line—parallel with it or otherwise?

A. When projected it would be the same place—the cliff was very steep there.

Q. The same place the flume grade was afterwards established? A. Yes, sir.

Q. When was that trail completed, about when?

A. I should say it was completed within the first week or ten days of September.

Q. Now, Mr. Kinzie, you were on the ground quite frequently between the time that Harry commenced building that trail along the flume grade and the time that it was completed?

A. I should say every three or four or five days—sometimes closer and sometimes a little longer period between. [733]

Q. At any time during that period of time while Harry was working on that trail and it was in course of construction, did you ever see anybody else on the ground except Harry and your other men—any men belonging to anybody except the Alaska-Juneau Company? A. No, I did not.

Q. Did you have any other men on that job during the month of August except Harry?

A. Yes, sir.

Q. How many others?

A. Three or four other men.

Q. What did they do?

A. They were clearing away at the side of the cabin and building the cabin, taking lumber up.

(Testimony of R. A. Kinzie.)

Q. What was the cabin built for?

A. To accommodate the men working on the grade.

Q. How long did those men work there?

A. I should say they were at work a week or ten days—I don't remember exactly.

Q. Now, did Harry get through with this preliminary work of running the trail along the line of the flume grade?

A. Why, that work was completed—that is, the trail was so you could walk from the tunnel, the Alaska-Juneau tunnel to the edge of the cliff along about September, between September tenth and September 14th—I was over there about that time.

Q. What is the character of the ground there with reference to the necessity of building such a trail before other work could be done?

A. The country is very steep along the side of Gold Creek, and [734] it is absolutely necessary to have some means of reaching the work and starting the work, and at one point it is impossible to get around it—it is precipitous cliffs.

Q. Was it necessary to build that trail before you did any other work? A. Yes, sir.

Q. What did you do after the trail was finished?

A. Before the trail was finished we had started the work on the upper tunnel—the upper tunnel had been measured out and located and the men had started to do work driving the tunnel.

Q. The upper tunnel—what tunnel was that?

A. The Alaska-Juneau tunnel just above the present grade of the flume.

(Testimony of R. A. Kinzie.)

Q. What was the purpose in driving that tunnel?

A. To convey the flume—to carry the flume underneath the canyon of Snowslide Gulch and bring it out on the other side and protect it from snowslides.

Q. What was the necessity for such a tunnel?

A. It was essential—there was no structure, no reasonable structure, that could be built at the bottom of Snowslide Gulch that could withstand the snowslides that occurred every year—they would be carried out.

Q. That made the tunnel necessary?

A. Yes, sir.

Q. When did you have the actual grade of the flume established on the grade, the setting of the grade stakes, do you remember?

A. I don't remember the first time, but the date I have in mind that we did the most of the work on was between September 10th and 12th. [735]

Q. You had a corps of surveyors up there at that time? A. Yes, it was surveyed at that time.

Q. What did they do?

A. They ran a line of levels from the point on Gold Creek just above the point of our present intake to a point where our tunnel had started—our upper tunnel of the Alaska-Juneau.

Q. What did you find with reference to that tunnel being in the right place?

A. If the tunnel remained in that position it would necessitate our starting our flume resting on the bed-rock with nothing to hold it in position, and furthermore it would give us a grade that would not be suffi-

(Testimony of R. A. Kinzie.)

cient to carry the volume of water we wanted without building a larger flume—that would accordingly increase the cost.

Q. Then, what did you do?

A. The upper tunnel was then—the men on the upper tunnel were then taken and put on the grade at which it was afterwards driven.

Q. How much of a tunnel did you drive there then—when did you change these men and put them down in the lower tunnel?

A. That was around the 12th—I was up there each day then. I have forgotten exactly.

Q. How far did you drive the upper tunnel?

A. The upper tunnel is in ten or fifteen feet.

Q. How far did you drive the lower tunnel—how far is that in by this time?

A. We are driving that tunnel from both ends. We started on the north side of Snowslide Gulch around the point, but the work during the winter has been confined to the south side of Snowslide Gulch. [736]

Q. Now, about the 12th you put on some more men. How many men did you put on about the tenth or twelfth?

A. Two or three additional men were put on then.

Q. They went to work in the tunnel?

A. They were in the tunnel; yes.

Q. What did you do next with reference to putting more men on the job?

A. At intervals of two or three days we increased

(Testimony of R. A. Kinzie.)

the crew and later on it amounted to between fifty and sixty men.

Q. When did your crew run up to fifty or sixty men?

A. That was at the time the rock work was being done around the cliff and the pipe-line being laid and the compressor being put in position and the compressor-house built.

Q. How many men did you have working there in September? A. The average for September?

Q. Yes.

A. I should say the average number of men for the month would be not more than six or seven.

Q. How many in October?

A. It might average ten or twelve men in October.

Q. How did the number of men you employed during August, September and October compare with the number of men that could be used to advantage on the job?

A. That is all the men that could be used to advantage on account of the character of the work.

Q. At any time during those months?

A. We used all the men we could to advantage.

Q. At any time? A. At any time; yes.

Q. When you used no one but Harry, how was that—was he the [737] only man you could use to advantage—could you use but one man to advantage?

A. Why, we considered at the time that one man was all that was required to do the preliminary work and start that grade—if we had more men they would be standing in each other's way.

(Testimony of R. A. Kinzie.)

Q. Now, explain to the Court how the work progressed from time to time in your own way, as you put on more men and what did they do—and give the dates as you go along, from and after the 12th of September when you commenced.

A. Well, the work was done at different places along the grade—it started with the tunnels at a point just northeast of the Alaska-Juneau cabin and the grade was continued along the east side of Gold Creek to where it met the face of the cliff—at that point—when we came to that point the men were put to work blasting out a shelf to hold the flume on the south end of the cliff and also men were put to work on the north end of the cliff building grade toward the crew working from the south end. In the month of October—the end of September or the first of October the dam was built and completed in its present position.

Q. At that time, by the first of October, the grade had been practically completed?

A. The grade was, I should think, two-thirds completed, up to the point of the cliff—that work had just started on October first. The dam was then completed and some work had been done the month previous at same point where our diversion was made, and all that was necessary at that time was to blast out a boulder and drop the first box and divert and get the flume into position.

Q. That was along about the first of October?
[738]

A. That was done on the third of October.

(Testimony of R. A. Kinzie.)

Q. Previous to this time the ground had been leveled off and the grade arranged for at the point where the dam was afterwards built? A. Yes, sir.

Q. What did you do, now, in October with reference to the building of that dam?

A. The dam was completed with the exception of some retaining walls, some wings, on October 3d or 4th.

Q. I hand you here a photograph marked Exhibit 12 and ask you to look at it and state what that line is there that runs from side to side on the picture.

A. That is the grade of the flume-line from the lower Alaska-Juneau tunnel up to the cliff, as it appeared on the morning of October 4th.

Q. How long had that been in that condition then?

A. The southern part of that had been completed for some time—the north end of the trail was not completed at that time—the men were using that to go to the point to work, the rock work at the end of that.

Q. How long had the flume been in the condition—the grade been in the condition in which it appears on that picture, the portion on the picture?

A. The work was still in progress.

Q. How long had they been working on that flume grade as it there appears?

A. At that particular grade?

Q. Yes.

A. That was along about, some time after the 12th of September. [739]

Q. Now, where is that grade situated with refer-

(Testimony of R. A. Kinzie.)

ence to the Parish #2 as platted on this Exhibit #7?

A. It is on the Parish #2, within the side lines.

Q. Where are the two tunnels that show in this picture? A. They are also on the Parish #2.

Q. Those tunnels both show in that picture, the upper and lower? A. Yes, sir.

Q. The picture referred to is Defendant's Exhibit #12? A. Yes, sir; 12.

Q. I hand you here another photograph and ask you to look at it. When was that taken and what does it represent—being exhibit heretofore marked No. 13?

Judge WINN.—We insist they identify these photographs in the proper way and have the photographer here.

Q. Were you present when that was taken?

A. Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. What does it represent?

Judge WINN.—I object. I insist they have the photographer here. It is not the best evidence.

By the COURT.—You have waived that on this picture.

A. This photograph shows the south view of the Alaska-Juneau dam, the boxes, the lower part of Miller's Gulch and the flume of the Alaska-Juneau Company as it appeared on the morning of October 4th.

Exhibit 13 is offered and admitted in evidence.

Q. I now hand you another photograph marked

(Testimony of R. A. Kinzie.)

for identification Defendant's Exhibit #14 (it is so marked), and ask you to look at it and state what it is. [740]

By the COURT.—Were you present when that was taken?

A. I was; yes, sir.

Q. Proceed.

A. It is a picture—it is a photograph showing a portion of the upper structure of the Alaska-Juneau dam and the intake as it appeared on the morning of October 4th.

Q. Were you present when that picture was taken?

A. I was.

Q. Does it correctly represent the matters and things shown on the picture? A. It does.

Q. Are there any delusions about it?

A. No, I think not.

The picture is admitted in evidence as Defendant's Exhibit Number 14.

Q. I hand you another picture marked for identification Defendant's Exhibit # 15 (it is so marked) and ask you to look at it and state to the court what it is.

By the COURT.—Were you present when that was taken?

A. Yes, sir.

Q. Answer the question.

A. The photograph was taken in the vicinity of the dam of the Alaska-Juneau Company.

Q. When? A. On the morning of October 4th.

Q. Does it correctly represent the matters and

(Testimony of R. A. Kinzie.)

things represented or indicated on the photograph?

A. What is that question?

Q. I want to know if that correctly shows the things on the ground, whether there are any illusions or delusions about it. [741]

A. No, I think it correctly shows the conditions.

Q. Explain the picture to the Court what it shows.

A. The picture shows in the lower left-hand corner the flume of the Alaska-Juneau Company as it appeared on the morning of October 4th and it also shows the hillside from which the boulders were rolled down during the morning of October third; it also shows some of the boulders in position on the side hill and the canyon of Miller's Gulch.

The picture is admitted in evidence as Defendant's Exhibit Number 15.

Q. I now hand you a photograph marked for identification Defendant's Exhibit #16 and ask you to look at it and tell us what it is. Were you present when that picture was taken? A. I was.

Q. What does it represent?

A. It shows the side hill just above the dam of the Alaska-Juneau Gold Mining Company and shows the havoc resulting from the explosion of a blast that had just taken place.

Q. When was that picture taken?

A. The morning of October 4th.

Q. Does that correctly represent the matters and things as they appear at that time, on October 4th, when the picture was taken? A. It does.

The picture is admitted in evidence as Defendant's

(Testimony of R. A. Kinzie.)

Exhibit Number 16.

Mr. HELLENTHAL.—I now offer in connection with the testimony of this witness first a certified copy of the Mulligan location notice.

Judge WINN.—We object to it as incompetent, irrelevant and [742] immaterial and no sufficient foundation has been laid for the introduction of it, and this is the first notice that was testified to that was posted up the creek—they have never taken any water out of the creek under that location at that place.

By the COURT.—It is a certified copy of a recorded notice?

Judge WINN.—Yes, sir.

Objection overruled. Plaintiff allowed an exception. The copy is admitted as Defendant's Exhibit #17.

Q. I now offer the deed from Mulligan to the Alaska-Juneau Gold Mining Company for the water rights obtained under that notice.

Judge WINN.—We object for the same reason—it does not tend to prove or disprove any of the issues, and no foundation having been laid for the introduction of the water notice, makes the deed incompetent, irrelevant and immaterial for any purpose in the case.

Objection overruled. Plaintiff allowed an exception. The deed is admitted as Defendant's Exhibit #18.

Q. What did you do in the month of October in the way of pressing the work, looking toward the diver-

(Testimony of R. A. Kinzie.)

sion of the water of Gold Creek under the notice that has been offered in evidence?

A. The dam was completed; first the grade both from the tunnel and around the cliff. I think the rock work was completed in October and a portion of the flume-line or the box of the flume-line started.

Q. Did you turn the water out of the creek in October?

A. That was done on October 3d—diverted into the headgates of the flume and into the flume. [743]

Q. How much water did you turn out of the creek—how large was the flume?

A. 3x3 feet, filled with water.

Q. That same sized flume—the same grade as it is now standing? A. Yes, sir.

Q. What did you do after the water had been diverted on October third—what did you do about connecting it up?

A. The work was then continued until the flume was extended around to a point on the Colorado claim where the pipe-line and compressor was installed and the water has since been in use for driving the tunnel.

Q. When did you build your compressor on the Colorado claim—what did you do in the way of building a compressor on the Colorado claim?

A. A compressor and pipe-line was built connecting the end of the flume—

Q. When?

A. I think that was in the month of November.

Q. What was that compressor for?

(Testimony of R. A. Kinzie.)

A. For driving the main tunnel to the mines—

Q. The main tunnel—what tunnel do you refer to?

A. The main tunnel extending from the canyon of Snowslide Gulch to a point beyond, beneath the lower pit, what is known as the lower pit in Silver Bow Basin.

Q. The portal of that basin is on what claim?

A. On the Colorado.

Q. Where was that compressor built?

A. On the Colorado just above Gold Creek.

Q. That compressor was for furnishing power for the running of that tunnel and what else? [744]

A. Power and ventilation and what power was needed at that point for rock work, tool sharpening or any other use it might be put to.

Q. Was there any other tunnels to be driven with it besides the main tunnel?

A. Just the two—the main tunnel and the tunnel that would carry the flume underneath the canyon of Snowslide Gulch.

Q. That is the flume you started on about the 12th of September? A. Yes.

Q. Now, what did you do in the way of applying the water previously diverted by you to that compressor plant?

A. The water used to drive the compressor was installed for compressing the air.

Q. What water was used?

A. The water diverted from Gold Creek.

Q. How?

A. By means of the dam, flume and pipe-line as

(Testimony of R. A. Kinzie.)

shown in the drawing.

Q. How was it conveyed from the dam to the compressor?

A. It was conveyed first through a flume-line and then through a pipe-line to the compressor.

Q. Where is that flume-line with reference to the flume-line indicated on the map Number 7 for identification? A. It is the same flume-line.

Q. Where is the compressor plant with reference to the point marked "compressor" on that same map?

A. That is the compressor I am speaking of.

Q. Where is the pipe-line running from the flume to the compressor with reference to the line marked pipe-line on that plat? [745]

A. That is the identical pipe-line.

Q. When was it you applied the water to that compressor for the purpose of generating power, what was the date?

A. I don't remember the exact date. I would have to look it up.

Q. Can you refresh your memory and tell me later on? A. I could in the morning; yes.

Q. Now, from that time on what have you been doing with reference to continuing work looking toward the conveying of the water to the place where you intend to build your proposed mill?

A. The flume-line—the grade for the flume-line—was continued up to the time it was interfered with by snow last fall. It was graded for a distance of something over a thousand feet.

(Testimony of R. A. Kinzie.)

Q. This side of Snowslide Gulch?

A. This side of Snowslide Gulch; yes.

Q. What else did you do—continue driving that tunnel?

A. The men have been continuously at work all winter driving that tunnel; yes.

Q. How far in is it?

A. Something over 200 feet at this time.

Q. How far have you got to have it driven before it will be connected up?

A. I think that is something over 600 feet—6 or 800 feet.

Q. Where is the flume now with reference to that tunnel—it is not through the tunnel?

A. No; the flume is carried around the cliff so that it could be used, so we could get it into position for generating air so we could drive the tunnel with machine drills instead of by hand.

Q. That is temporary?

A. From the point marked tunnel around to the penstock is the [746] temporary grade or a temporary flume.

Q. Can a flume be maintained at the point where it is now,—that is, permanently maintained?

A. Not without a great deal of additional expense at that particular point—the worst part of it is at the end where the penstock is located. I don't think it could be maintained there.

Q. The practical scheme is to run the tunnel?

A. Yes, I think so; it is the safest anyway.

Q. Now, Mr. Kinzie, how has this work been car-

(Testimony of R. A. Kinzie.)

ried on by you from the first of August to the present time with reference to being continuous or otherwise?

A. It has been continuous—we have been at work continuously since we started there.

Q. How many men have you had at work from the first of August to the present time with reference to the number of men that can be used to advantage on the ground?

A. We are using all the men we think can be used to advantage.

Q. What have you done from the first of August to the present time in that behalf?

A. We have used every man that we could use to advantage so that the work would be pushed along just as fast as it possibly could, without undue expense.

Q. The waters at present being used by you in the compressor are permitted to run from there down into the creek?

A. It flows into Gold Creek at that point and flows down the channel of Gold Creek.

Q. How long have you been using the water in connection with the operation of that compressor?
[747]

A. Since last November.

Q. How have you been using it from November up to the present time—as to using it continuously or otherwise?

A. It has been used continuously.

Q. What is your intention with reference to the

(Testimony of R. A. Kinzie.)

future use of the water in connection with the driving of that compressor plant?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. That compressor plant will be maintained in its present position until the tunnel is completed; it is our intention to convey all the water after the tunnel is finished around to the shore of Gastineau Channel. You can convey air a good deal cheaper than you can water; you can get the benefit out of the water and take the air back over the same course much more economically than you can take the water out and waste it.

Q. You intend to use it until the tunnel is completed and then take the water out and use it at the beach? A. Yes, sir.

Q. Now, I will ask you when you first observed men other than your own men upon the ground covered by the Parish or Oregon locations?

A. In the latter part of September.

Q. Where did you observe them?

A. There was a man standing at the dump of their lower tunnel—the tunnel close to Gold Creek, at the south end of the cliff I have referred to above, immediately below our flume grade.

Q. Do you know George Bent? A. I do. [748]

Q. Did you see him in August of 1910?

A. Yes.

Q. Do you recall having any conversation with

(Testimony of R. A. Kinzie.)

George Bent with reference to this matter immediately or a short time before the suit known as "803, The Ebner Gold Mining Co. vs. the Alaska-Juneau Co." was commenced in this court? A. I do.

Q. Who is George Bent?

A. I understood he was in charge of the work at the Ebner mine.

Q. Relate that conversation—I mean the conversation dealing with this matter at issue now.

A. In the month of August I had a conversation with him with reference to our work, the work we were doing toward diverting the water from Gold Creek.

Q. You may state what that conversation was. I now ask what that conversation was.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial—no conversation he had with Bent would bind the Ebner Gold Mining Company and no foundation has been laid for the conversation—and it is hearsay.

Objection overruled. Plaintiff allowed an exception.

A. It was at the time the cabin—I think the cabin was just about completed at the time and we were then working just above on a trail. Bent called me and asked me what work we were doing at that cabin, and I told him we had started or were going to start a crew at work to build a flume-line and take the water from Gold Creek, and he said, "Well, on what ground is that?" And I said, "As far as I know it is on the claim of ours known as the or called the Ore-

(Testimony of R. A. Kinzie.)

gon,” and I said, “Why, is there any dispute about it?” He said, “Well, I [749] will be over to see you about it.” He said, “I will be over to-morrow,” and I said, “All right.”

Q. Did you have any further conversation with him?

Judge WINN.—We make the same objection—incompetent, irrelevant and immaterial, hearsay, no foundation laid and not binding upon the Ebner Gold Mining Company.

Objection overruled. Plaintiff allowed an exception.

A. The next day he called me up.

Q. Did you have any further conversation with Bent in regard to this matter?

A. He called me up the next day and said—

Q. What was that further conversation you had with him the next day?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. He called me up and informed me that his boat was scheduled to get in sooner than he had anticipated and that it would be impossible for him to get over to see me that day, but that he was going to Seattle and was going to return immediately, and upon his return he would come over and talk the question over with me—that was the end of it.

Q. Did you have any further conversation with Mr. Bent in reference to the matter at a later date?

A. I had at the time of the trial of the so-called Basin cases.

(Testimony of R. A. Kinzie.)

Q. What time was that—in the year? About what time, what month?

A. That was in December, if I remember correctly.

Q. What was that conversation? First, where was it? A. Here at the courthouse.

Q. What was the conversation? [750]

A. Same objection. Objection overruled. Plaintiff allowed an exception.

A. Why, I met Mr. Bent in the hall and I asked him, “I thought,” I said, “that you were going to be back immediately from Seattle and talk this matter over with me.” I said, “I don’t think it was exactly the way to do, to leave and immediately bring suit.” He said, “I didn’t know anything about the suit, when it was brought,” and I said, “Who brought it—your attorneys?” And I think it was Burch was standing with me and he broke into the conversation then and that is all there was to it.

Q. That is all there was to it? A. Yes.

Judge WINN.—We move to strike these conversations as incompetent, irrelevant and immaterial and not binding upon the Ebner Gold Mining Company, and hearsay.

By the COURT.—There are no admissions—it simply amounts to notice given to him by Mr. Kinzie. Motion denied.

Plaintiff allowed an exception to the ruling.

Q. You said about the 18th of September you saw a man on the lower tunnel of the Parish claim?

A. No; I think it was later than the 18th.

Q. About what date?

(Testimony of R. A. Kinzie.)

A. My recollection was it was either the 26th or 28th of September.

Q. How many men did you have at work on the grade on the flume line at that time?

A. Eight or ten; I don't remember exactly.

Q. All at work within the limits of the Parish claim as delineated on the map? [751]

A. They were, yes. I think some of the men were working on the sidehill. They were handling lumber and logs.

Q. Scattered along the flume grade?

A. No, it was not scattered along the flume grade—the lumber and logs were on the side.

Q. I am talking about the men.

A. The men were working on the flume grade on the sidehill.

Q. At one point or different points?

A. They were scattered along the flume grade from the tunnel over to the cliff.

Q. That is near the place where the dam was built—that cliff, you mean?

A. Yes, that cliff—it is some distance from the dam.

Q. How long had they been working along there when you saw the first man on the Parish lode?

A. Some of the men had been working there from the time the tunnel had started.

(Witness temporarily withdrawn to permit the examination of Mr. Pond.)

Witness excused. [752]

**[Testimony of Percy Pond, for Defendant
(Recalled).]**

PERCY POND, recalled.

(By Mr. SHACKLEFORD.)

Q. I now hand you a photograph marked Defendant's Exhibit #19 (it is so marked) and ask you if that photograph was taken by you? A. It was.

Q. At whose request? A. Mr. Stewart.

Q. Was he with you at the time it was taken?

A. He was.

Q. Is that a correct representation of the things set forth in the photograph? A. It is.

Q. What date do you know was that taken?

A. It was taken on the 23d of May, this year.

Q. The date is in the corner of the photograph?

A. Yes, sir.

Q. I will hand you another photograph marked Defendant's Exhibit #20 and ask you if that was taken at the same time?

A. It was taken on the same day.

Q. Was Stewart with you? A. He was.

Q. That is a correct representation? A. It is.

Q. I now hand you another photograph marked Defendant's Exhibit #21 and ask you if that was taken at the same time?

A. It was taken on the same day.

Q. Was Stewart with you? A. He was.

Q. And it is correct representation of the things set forth? [753] A. Yes, sir.

Q. I hand you another photograph marked Defendant's Exhibit #22 and ask if that was taken by

(Testimony of Percy Pond.)

you? A. It was.

Q. Was Mr. Stewart with you? A. He was.

Q. It is a correct representation?

A. Yes, sir, it is.

Q. I hand you another photograph marked Defendant's Exhibit #23 and ask if that photograph was taken by you. A. It was.

Q. What day was that taken?

A. On the 26th of May, 1910.

Q. At whose request?

A. At the request of Mr. Stewart.

Q. What is that a photograph of?

A. That is a photograph looking down Gold Creek from a point near the dam to which this flume leads.

Q. It is a correct representation? A. It is.

Q. I now hand you another photograph marked Defendant's Exhibit #24. Was this taken at the same time as #23?

A. Yes, sir, it was taken on the same day.

Q. Under similar circumstances? A. Yes, sir.

Q. It is a correct representation? A. Yes, sir.

Q. Just state to the Court what it shows.

A. This is a view looking up Gold Creek at a point about 100 feet below the dam which this flume leads to.

Q. Referring to all these photographs I have just asked about [754] they were taken in the vicinity of the water right of the Alaska-Juneau Company and the property claimed by the Ebner Gold Mining Company? A. Yes, sir.

Q. On or near Gold Creek? A. Yes.

(Testimony of Percy Pond.)

(By Judge WINN.)

Q. You mean the pretended water right, do you?

A. I don't know anything about that.

Q. (By Mr. SHACKLEFORD.) You mean the water right that appears there with the large flume extending some 100 feet down the creek, don't you?

A. Yes, sir.

Q. That is the Alaska-Juneau flume, the one on the right-hand side of the creek going up?

A. Yes, the one on the right-hand side of the creek going up.

Q. All these pictures that show any flume at all are parts of that flume that runs up there?

A. From Snowslide Gulch to the dam.

Q. On the right-hand side?

A. On the right-hand side; yes.

Q. Do you know anything about these corner posts—this is exhibit #10—do you know where that corner post is, that corner post over there near the cabin on the right-hand side of the creek going up?

A. It is the same post I took a photograph of last fall near that cabin.

Q. You took a photograph up there for us?

A. Yes, sir, I did. [755]

Q. And that is the same post?

A. That is the same post.

Q. Here is another one on exhibit 20—did you ever take a photograph of that same post for us too?

A. I did not.

Q. Where is that?

A. That is up the hill from that first post, about

(Testimony of Percy Pond.)

100 feet or so.

Q. (By Mr. SHACKLEFORD.) You mean up the hill from the post in 19?

A. Yes, up the hill from this post in #19.

Q. You saw the post, did you? A. I did.

Q. Was there any number on either that is not shown on the picture? It seems like there is a rock or cross in the way there.

A. It must be under the snow—I didn't see any number, U. S. S. number.

Q. That is all you saw?

A. That is all I saw.

Q. This Number 21 has a spade stuck in the ground—where is that?

A. That is the open cut referred to in the photograph that was admitted this morning.

Q. That was pointed out to you by Mr. Stewart as being an open cut of some kind that he wanted that to show up? A. Yes, sir.

Q. And that is the reason the spade is stuck in there? A. Yes, sir.

Q. What is that—ice or snow there?

A. That is snow.

Q. This one we have here, Number 24, shows two pieces of flume [756] apparently, one on the right-hand side of the creek and one on the left-hand?

A. Yes, that is the old Jualpa flume on the left-hand side.

Q. Where was that picture taken that refers to the dam across the creek up there that the defendants have put in?

(Testimony of Percy Pond.)

A. Right at the beginning of the flume—it shows a part of the dam structure there.

Q. That is near the intake of the flume?

A. Yes, right at the intake of the flume.

Q. And this little piece of dam around the corner there is part of the dam?

A. I believe that is part of the gate.

Q. This one #23 shows a part of the flume on the right-hand side of the creek as you go up—it is a flume claimed by the defendant company in this case?

A. Yes, sir.

Q. Was any other object pointed out to you to be included in this photograph except the part of the flume shown there?

A. I was alone when I took this picture. Stewart directed me to go up there and take a picture looking down the creek.

Q. Now, #22, where is that stake, do you know—can you describe any natural objects around there so I can tell?

A. That is still further up the hill from that bottom stake that I referred to near the cabin that I took last year.

Witness excused. [757]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE—Continuation of direct examination.

(By Mr. HELLENTHAL.)

Q. Where were the men working after the 12th of September on the grade, at what point on the

(Testimony of R. A. Kinzie.)

grade were the men working?

A. They were working all along the grade on the intake from the dam to the penstock.

Q. From the dam to the penstock?

A. Yes, sir.

Q. The dam—that is the point marked on the map exhibit #7 as the Alaska-Juneau dam? A. Yes.

Q. And thence to the penstock—that is the place where the pipe connects up with the flume and conveys the water to the compressor?

A. Yes, sir; it is.

Q. How were they working from that time on, until the flume was completed—where were they working, at what points and how were they working?

A. The work was distributed along the entire grade from one end to the other.

Q. How many men did you say now?

A. You mean the average number of men during that period?

Q. How many men did you commence with about the 12th of September?

A. On the 12th there were two or three men.

Q. And how did you increase them?

A. Increased to fifty or sixty at the time the final work was being done, the compressor installed and the pipe-line put in.

Q. What did you say as to the necessity of having that water [758] for the purpose of driving the compressor plant?

A. It is essential for driving the compressor plant.

(Testimony of R. A. Kinzie.)

Q. Is there any other source of power to drive that compressor? A. No other source.

Q. Now, when did you next see men—you were on that ground off and on every two or three days during that time?

Objected to as leading. Objection sustained.

Q. How often were you on the ground after the 12th of September?

A. After the 12th I used to go up there I should say on an average of three times a week.

Q. The first time you saw men on the Parish there was a man on the lower tunnel—what date was that?

A. That was either September 26th or 28th.

Q. When did you next see men on the Parish? Men other than men in the employ of your company?

A. You are talking of the Parish now?

Q. Yes, the Parish.

A. The next time I saw any men on the Parish was on October third.

Q. Where was that, what part of the Parish were they? A. They were at the same place.

Q. When did you next see men on the Parish?

A. On the morning of October 4th—there were men down at this tunnel.

Q. This same tunnel? A. Yes, sir.

Q. What were they doing?

A. When I saw them they were standing out on the dump looking at us.

Q. They were working in the tunnel part of the time? [759]

A. They evidently were, yes—Mike McKenna was standing there.

(Testimony of R. A. Kinzie.)

Q. Has there ever been at any time, from the time you first located the water to the present time, any habitation or other place where anyone can find shelter within the boundaries of the Parish #2 or the Oregon claim except your house that you have built? A. No, there is not.

Q. No habitation of any kind? A. No, sir.

Q. Do you know where the Canyon claim is located? A. Yes, sir.

Q. Were you present when the discovery was made? A. I was.

Q. Where was the discovery made?

A. At a point about thirty feet north of the dam of the Alaska-Juneau Company.

Q. Will you please mark it on the plat—#7?

A. It would be in here some place.

Q. Mark the point where the discovery was made on the Canyon with a letter “B”?

(Witness does so.)

Q. What did you find there in the way of rock in place, bearing gold or silver or other precious metals?

A. There was a well-defined stringer of quartz crossing the bed of Gold Creek at that point.

Q. What does it bear, what kind of quartz is it?

A. It is gold-bearing quartz.

Q. What kind of quartz is that quartz you discovered on the Oregon you testified to this morning?

A. I testified to it as being gold-bearing quartz.

[760]

Q. What did you do with reference to making a

(Testimony of R. A. Kinzie.)

location of the Canyon claim at that time or what did you have done?

A. The men who made the location were present on the ground at the time he posted his notice.

Q. (By Judge WINN.) Were you present when he posted the notice? A. No, I was not.

Q. Were you present when he drove the stakes?

A. No, I was not.

Mr. HELLENTHAL.—I will offer the location notice of the Canyon.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial; no proper foundation laid for its introduction.

Mr. HELLENTHAL.—We will follow that with evidence of the locator.

Objection overruled. Plaintiff allowed an exception.

The location notice is admitted as Defendant's Exhibit #25.

Cross-examination.

(By Judge WINN.)

Q. When did you say you first came to Alaska?

A. About—a little over ten years ago.

Q. What position with the defendant company or with the Treadwell Company did you first occupy when you came here?

A. Assistant superintendent—of the defendant company?

Q. Yes. A. Assistant superintendent.

Q. And what of the Treadwell Company?

A. Assistant superintendent.

(Testimony of R. A. Kinzie.)

Q. Who was the superintendent at that time?

A. Joseph McDonald.

Q. Ten years ago—that would be in 1901?

A. That would be 1901; yes. [761]

Mr. HELLENTHAL.—If counsel will pardon me a moment—I want to ask a few additional questions.

(By Mr. HELLENTHAL.)

Q. Do you know what Mr. McDonald's authority was with reference to the sale, abandonment or other disposition of property of the Alaska-Juneau Gold Mining Company?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, no foundation laid, and it is not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. I do.

Q. What was his authority?

A. He could not dispose of the property belonging to the corporation.

Q. Did he have any authority to abandon property?

A. He had not, without instructions of the Board of Directors.

Judge WINN.—We desire to make the same objection.

Objection overruled. Plaintiff allowed an exception.

Q. Do you know John Lund, United States deputy marshal? A. No, I do not.

Q. You don't know him at all?

(Testimony of R. A. Kinzie.)

A. No, I do not.

Q. You heard the testimony with reference to Mr. Lund, United States deputy marshal, being up there in the Basin during the trouble?

A. Yes, sir.

Q. Did he have any connection with the Alaska-Juneau Gold Mining Company?

A. None whatever.

Q. Did you have any dealings with John Lund at all? [762]

A. Never spoke to the man Lund that I know of.

Continuation of Cross-examination.

(By Judge WINN.)

Q. Who was superintendent when you came here?

A. Joseph McDonald.

Q. How long did he remain superintendent of the defendant company?

A. I think it was some time in 1905,—either 4 or 5.

Q. He remained superintendent of that company until the time he left here? A. Yes, sir.

Q. Do you know what time it was—whether it was four or five? A. I think it was 1905.

Q. And during all of this time, during the superintendency of Mr. McDonald, you remained as assistant superintendent of both of these corporations that he was superintendent of? A. I was; yes.

Q. Now, Mr. Kinzie, did you pass any of your time over here during say from 1901 to 1907—did you pass much of your time on this side of Gastineau Channel looking after the defendant Company's property?

(Testimony of R. A. Kinzie.)

A. I had practically the entire charge. Mr. McDonald went up there very seldom.

Q. During those years how frequently would you make trips over here and go up the Basin road?

A. Three or four times a week.

Q. During that period?

A. During the summer period, during the working season—winter time I did not.

Q. You usually had the same sort of a system up there—had a foreman up there at the mill in the basin? [763]

A. There was a man in charge there; yes.

Q. When did you say, so far as you are concerned you conceived this plan of opening up the property that Mr. Hellenthal has questioned you so much about?

A. I think the plan originated the year before I came here, that is the main outline—the detail was afterwards added to.

Q. It wouldn't take much of your time to figure out, knowing the contour of the ground and where your five and thirty-stamp mills have been located and taking into consideration the water power you have been using, it would not take much time to figure out that is not a proper place to build a mill?

A. We are well aware of that fact.

Q. That has always been conceded that the way of opening up and developing a mine—this property—it could not be done way up there in the mountains where you have this five or thirty-stamp mill?

A. No; there was a scheme spoken of at the time,

(Testimony of R. A. Kinzie.)

but I don't think it was seriously considered, of building a mill up there—

Q. You have taken quite an active part in the prosecution of these civil and criminal cases in court pertaining to this Ebner property?

A. I have; yes, sir.

Q. Do you remember the case that was first brought in this court, 803-A, in which the Ebner Gold Mining Company made application to this Court for a temporary restraining order against your company?

A. I do, yes, sir; that was the original suit?
[764]

Q. Yes, the first one brought?

A. Yes, I remember.

By the COURT.—What is the date of that complaint—the verification?

Judge WINN.—The verification of the original complaint in 803-A—August 26th?

Q. On the hearing of that case, at some stage or other, you made and signed and swore to some affidavits, did you not? A. Yes.

Q. I will hand you here an office copy of an affidavit and I will present the original to you if you desire it—it is an affidavit filed in case #803-A—and call your attention to the last paragraph on page 3. I hand you the original of that affidavit and ask you if that is your signature to it?

A. It is; yes.

Q. I will ask you if you remember this portion of your affidavit which I have just exhibited to you:

(Testimony of R. A. Kinzie.)

That the Alaska-Juneau Gold Mining Company for the past three years has been actively engaged in work looking toward the construction of the contemplated mill and looking toward the carrying out of plans disclosed in the answer; that if the said company were enjoined at this time from prosecuting their work it would delay their completion of the entire scheme for a period equal to that during which said temporary order might remain in force. Do you remember that being in your affidavit at the time you swore to it? A. I do.

Q. When did you commence contemplating this scheme of opening up—was it three years ago or a longer time? [765] A. It was both.

Q. Take the affidavit—you state that you commenced active work three years ago looking towards the opening up of this property in the manner you have testified concerning—what particular steps of activity did you make three years ago that you did not make prior to that time?

A. That was the original mapping and determining of the faulting that cuts off our ore body at the southwest end—what is known to us anyway as the Silver Bow fault. About four years ago we struck a side fault and it was opening up that body and driving the upper tunnel through it and locating this fault with regard to the ore bodies that show in our lower tunnel for part of the way.

Q. What particular act had you pursued of this plan prior to three years ago?

A. In fact, all the work that was done in the

(Testimony of R. A. Kinzie.)

Alaska-Juneau we considered as comparative preliminary work. It was the same stamp-mill scheme from beginning to end, and each year the tunnels crosscuts and open pits were continued with that object in view.

Q. Where is this long tunnel you testified concerning this morning that Mr. Hellenthal was cross-examining you about? I believe you stated you spent several thousand dollars on it. Will you indicate it on this map and plat that you have been testifying about? A. No, I can't show it on that plat.

Q. Exhibit Number 11, Identified Exhibit No. 11—where is the tunnel? Please point it out.

A. The tunnel starts from the Aurora claim at a point. It would be about 400 feet due south of our compressor building; [766] it would practically start at the point where that is marked "B"; that is the five-stamp mill and that is where our mill tunnel starts, but the other long cross-cut tunnel was at a point at the junction, I think, of the Fuller with the Aurora claim.

Q. I wish you would mark there the direction those two tunnels you are just describing run.

A. They run in this direction.

Q. Mark it—commence at D.

A. Yes, sir; it would run like this and the other started at the side line here and came in up to the lower pit—turned off at an angle of 45° and ran through the gulch there.

Q. And those tunnels are not to be used as working tunnels but just simply run for the purpose of

(Testimony of R. A. Kinzie.)

sampling and determining the value of the ore bodies.

A. The tunnels were primarily crosscutting the ore body in depth to determine its values and continue the values to that depth.

Q. If the tunnels had been running straight on and not turned at the angles you have indicated, they would come out somewhere near Sheep Creek?

A. Yes, sir.

Q. The tunnel that turns off in an angle of 45° wouldn't be a very good working tunnel, would it?

A. Oh, yes.

Q. Turning a sharp corner of 45° it would be a good tunnel to work the property through?

A. Yes, you could turn it 90°.

Q. Have you stopped work on those two tunnels?

A. No, sir, we are working at the present time in the lower [767] mill tunnel, cutting off the sampling strip. The work of driving the tunnels ahead is not being continued at this time. We are cutting off the sides of the tunnel and running what are known as sorting tests.

Q. Now, you said this morning that you made a considerable examination of what is termed the Parish #2 claim in endeavoring to sample it to find out whether certain rock you found there carried any values or not. Now, on the exhibit which we have offered in this case marked Exhibit "N," I wish you would show the Court there where you made these particular investigations of the surface ground to find out whether there was any rock there in place or any that carried values? A. On the Parish?

(Testimony of R. A. Kinzie.)

Q. Yes—the Parish #2?

A. The work on the Parish 1 part you can see a cross-section where our two tunnels are at present and along the side of Gold Creek.

Q. That is where you made your investigation you testified to this morning that you did not find any rock in place and about the slide, etc.?

A. No, that was above that on the bench.

Q. That is what I am speaking about?

A. That is over here (indicating).

Q. Over at the Borean Pit, which is marked on this exhibit as an open cut, somewhere in that neighborhood?

A. Right there where it is marked open cut.

Q. Did you sink any shaft there or do any washing off or remove any earth to find out as to whether you could discover any rock in place or not bearing mineral? [768] A. I did not.

Q. You were giving your opinion principally this morning from looking at the ground—when you gave your evidence as to the approximate depth, you thought the slide was at those different points?

A. I did.

Q. You didn't sink any shafts or run any open cuts or any tunneling or in any wise remove any of the earth to any depth to find out anything?

A. I moved no earth.

Q. Then, I understand that your testimony in that respect was chiefly testimony given judging from the formation of the ground there, etc.?

A. As to the depth of the gravel?

(Testimony of R. A. Kinzie.)

Q. Of the slide; yes.

A. Yes, sir; you can get two sections of that property—three sections.

Q. Well, now, you don't attempt to state to the Court, do you, if you moved off sufficient of that slide to get down to bedrock, you don't know what there is under there, do you?

A. We have a very good idea; yes.

Q. How positive would you be—if you should go and sink a shaft there until you got to bedrock, how positive would you be in your evidence now, from the knowledge you have, whether or not you would find any rock in place or ore carrying values?

A. Certainly you would find rock in place and I am so positive—well, I am practically sure of what the character of the bedrock would be, as you have the strike of the country in the cross-section given by Gold Creek. You have the same [769] strike and the same character of country just beyond in Snowslide Gulch, so that the strike of the country is directly through that point.

Q. Well, the strike of the country almost runs parallel with all these claims located up here including your Canyon claim and the Parish and Lotta and Taku?

A. No, the lower part runs at a slight angle to it.

Q. What do you mean by the lower part?

A. There is a faulting or a slipping just inside the Parish claim at a point just where the Borean pit is.

Q. Would you want to base your opinion of the formation you discovered there without sinking a

(Testimony of R. A. Kinzie.)

shaft or going down to bedrock—would you want to put an opinion of that kind against the opinion of a man who has absolutely gone down to bedrock and taken the rock and sampled it?

Objected to as argumentative. Objection sustained.

Q. As a mining man, I want to see how you estimate testimony—would you take the opinion of an expert who had not gone down to bedrock as to the value of that rock as against one who had gone down and made an examination and made the test?

A. If he had gone to bedrock and made the test I would take his word.

Q. When was it you made these investigations you testified concerning this morning to find out and ascertain whether there was any rock in place or any valuable ore bodies upon the Parish #2 claim?

A. Did I testify that there was any valuable ore bodies on the Parish #2 claim?

Q. No, but the investigations you made which you state did not result in the discovery of any—when did you make [770] these investigations regarding this country?

A. As to Miller's Gulch and Snowslide Gulch I went over it in detail last Sunday.

Q. You know that if this Canyon claim which you located is a mining claim, with sufficient indications to convince you that there is something there to locate—if that Canyon claim has a point of discovery at the point you indicated on your map a while ago and has its side lines parallel to the Lotta loc'e claim and tak-

(Testimony of R. A. Kinzie.)

ing in part of the Parish and part of the Lotta—if that is true, you thought there was sufficient indications to make a location there?

A. On the Canyon?

Q. On the Canyon. A. Yes, I thought so.

Q. Now, you testified this morning quite a bit on direct examination about the Oregon lode claim—when did you first know anything about the Oregon lode claim that was located by Corbus?

A. When I first came up here.

Q. In 1901?

A. Either 1900 or 1901—the first time I went over the maps.

Q. And you saw that delineated on some of the maps in the office of the company?

A. Yes, that was a group of claims they thought of locating at the same time.

Q. Now, when did you make any investigation to find out whether the Oregon lode claim as located by Corbus carried any valuable ore or any rock in place?

A. Why, I went over that entire group the first season that I was up here—the first summer. [771]

Q. Did you make any investigation particularly of the Oregon lode claim?

A. Of that claim in particular?

Q. Yes.

A. No, I did not. I went on as quick as possible on each of our claims.

Q. Did you make any particular investigation of the Wyoming? A. I was upon the claim.

Q. In this case #803-A, in this court, which was

(Testimony of R. A. Kinzie.)

commenced first by the Ebner Gold Mining Company your company, I believe, filed an answer in that case. I will ask you if you verified that answer and if that is your signature? A. Yes, sir, it is.

Q. And that answer was filed on September first, 1910. In that answer that was filed in that case you made no pretensions to claim any of the ground in controversy except under the old Oregon lode located by Corbus and what you termed the Wyoming lode claim, did you?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant, and immaterial and not the best evidence.

Judge WINN.—We desire, then, for the sake of showing what they predicated their defense upon in that case and for that matter alone, to offer in evidence the answer—I don't mean the supplemental or amended answer, but the answer in that case—and have it marked as an exhibit and have it copied eventually in the record.

Objected to as incompetent, irrevelant and immaterial.

Objection overruled. Defendant allowed an exception.

It is marked Plaintiff's Exhibit "CC," copy is attached hereto and made a part hereof. [772]

By the COURT.—Is that a live case, 803?

Judge WINN.—No, sir, that is the injunction suit—it has been dismissed.

Q. Now, at the time this answer which I have just identified having been filed on the first of September,

(Testimony of R. A. Kinzie.)

1910, the answer to the complaint in 803-A, at that time you knew your company was making some claim to the property in controversy under the Canyon lode claim and also the Oregon location as made by Datson, did you not? A. I did, yes. That was September?

Q. September 1, 1910? A. Yes.

Q. In setting up in your answer a defense to that action set up in the complaint why was it you didn't claim the property in that suit under the Datson location but under the Corbus location?

A. I don't really remember what was set up in that answer at the time.

Q. You talked with Mr. Hellenthal, your attorney, and gave him what you supposed to be the facts concerning the title you were claiming to the property in controversy?

Same objection. Objection overruled. Defendant allowed an exception.

A. Why, yes, we talked the case over a great many times.

Q. In addition to the tunnels you have just described to the Court that you ran on some of the property of the defendant company commencing some three or four years ago, what other active work have you been engaged in on this property up to say July, 1910,— what other active work have you been engaged in on this property?

A. You mean on the entire property. [773]

Q. Yes.

A. Why, there has been a series of tests run every year from those cross-cut tunnels and from the open

(Testimony of R. A. Kinzie.)

pits on the top and the driving of the drifts, raises and cross-cuts from the various tunnels that have been driven and we have from time to time had other property that we thought might be needed in the prosecution of the plan—something might come up that we thought would be of use to us and then that property would be required.

Q. That has been actively carried on you say for the last three or four years?

A. No, we have carried no property except by location for the last three or four years—the principal work has been of a geological nature; we have been following out the bearing of the faults and particularly the large fault, the Silver Bow fault, with reference to what throw it would have on our ore bodies in depth and also the character of the rock itself, which was a very important item.

Q. That is all preparatory work for your information and upon which information you concluded upon the best plan for opening up and mining the property?

A. The best plan and the character of the plant itself and the character of the mill, for instance.

Q. It furnishes you with the information upon which you would direct certain subsequent running of tunnels and would lead you to the conclusion where would be the best place to put your mill and all those things? A. It would.

Q. Now your work really looking towards the opening up of this property on the scheme Mr. Hellenthal laid out this morning has been principally over the

(Testimony of R. A. Kinzie.)

last three or four years. [774]

A. No, indeed, most of the money has been previous to that time; that is, as far as money goes.

Q. How much money did I understand you to say this morning you had expended in running these tunnels which you have marked on your identified exhibit "11"?

A. I didn't say how much money it took to run these tunnels.

Q. The amount you testified to this morning when Mr. Hellenthal asked you how much money you had expended—you placed it at how much, do you remember? A. I think it was between 520 and \$530,000.

Q. That is extending over what period of time?

A. I think that is over eleven years.

Q. Since the time you first came here?

A. Since the time I first came here; yes.

Q. You mean you have spent that much money in working the property, do you?

A. In working the property; yes.

Q. Did you purchase any property with any portion of that money?

A. Yes, there was one piece of property purchased.

Q. You mean that is about what the property stands you, do you?

A. No, it doesn't include the purchase price or anything of that sort—this is simply a piece of ground, at the time we were considering building a mill in the Basin; that was six or seven years ago.

Q. You testified this morning concerning this identified exhibit No. 11 and said that the property

(Testimony of R. A. Kinzie.)

that is colored around with pink is the property that belongs to the defendant company.

A. Either belongs to the Alaska-Juneau Company by location or patent and there is a part just below that we have practically [775] under option, with a part of that property which has been disputed.

Q. Commencing up here with the word tunnel, which is a narrow point on your exhibit 11, and coming on down the creek, do you claim to the Court that you own all that property down here, clear down to the beach? A. We do.

Q. Don't you cross John Reck's property, that he has applied for a patent for, and Caro?

A. Yes, I believe there is some conflicting claims there.

Q. You know they have the claims there and had them surveyed for patent?

A. No, I do not. I know they were surveying there.

Q. Haven't you been over to Caro and been over to Reck and did you make a settlement with them about going over that property—if you could cross it?

A. I have.

Q. You have never adjusted that matter?

A. Not with them, but that was a very small thing to be done there.

Q. What other property do you cross over that you know is claimed as a mining claim, coming down to the beach?

A. There is no other property except one piece our pipe-line crosses and the mill—I believe that belongs

(Testimony of R. A. Kinzie.)

to—I believe Shattuck claims it and there has been an adverse to that.

Q. And when you get down to the shore, to the beach, you encounter what is called the Lincoln lode claim owned by Shattuck & Reck?

A. I just said there is a piece of ground there—we have practically secured a piece taken out of that.

[776]

Q. Have you bought a millsite off that property from Reck & Shattuck?

A. We haven't bought it; no.

Q. You haven't even an option for it?

A. We have an oral option, yes, Shattuck and I. When Mr. Bradley was here Mr. Bradley talked it over with Shattuck and it is simply a question of price. At the present time we own the next claim, the outer claim, which would be an extension of our flume-line of perhaps a thousand feet; something like that.

Q. Did Mr. Bradley have any understanding with Shattuck in your presence about the purchase of this millsite down here? A. He did.

Q. The only thing talked over at all was how much Shattuck wanted and how much you wanted to pay and you left the whole thing in that condition?

A. Not at all.

Q. You know Reck is interested in that property?

A. We found that out later.

Q. Have you had any arrangements made with Reck by which you would get a millsite down here on the beach? A. I have.

(Testimony of R. A. Kinzie.)

Q. Have you concluded that arrangement?

A. Reck's arrangement is—whatever arrangement Shattuck makes is agreeable to him.

Q. That is the only understanding you have at present—you have no paper writings concerning it?

A. No.

Q. It was merely a conversation?

A. I consider that more than a conversation—Shattuck has promised us we can have a right of way from our Bear claim [777] down to the beach.

Q. Where is the Bear claim?

A. That is the point our flume shows on.

Q. Indicate it on this map.

A. Right here (indicating).

Q. What is this proposed flume and tram along where those letters are—are there any mining claims, anybody laying claim to that except you?

A. I never heard of it.

Q. Where is the Shattuck claim represented there?

A. The Shattuck claim came around by Chief Johnson's house and comes around the Jorgenson sawmill.

Q. And it represents the ground where you have this *darm* triangle marked near the proposed 200-stamp mill?

A. That portion has been excluded, that has been taken out from the patent as applied for by Shattuck.

Q. Does that belong to you or your company?

A. No, it does not.

Q. Then, the ground you have the proposed mill marked on here does not belong to your company?

(Testimony of R. A. Kinzie.)

A. We have an option, by paying so much for that property, that as soon as the status of the present litigation has been settled, we will get it.

Q. You have a written option on that?

A. It is not a written option.

Q. You have the same sort of oral agreement with the parties who own it?

A. We have an oral agreement.

Q. With whom? A. With the natives.

Q. Do you expect an oral agreement with a native to be worth [778] very much in the transfer of property? A. That kind of property, yes, sir.

Q. The only title you have, then, to this proposed 200-stamp millsite or location you have marked on this plat and map is the promise of some natives who live down there that they may transfer to you, an oral promise? A. Not at all.

Q. Have you any paper writing with those natives?

A. No; no paper writing.

Q. You have their oral word?

A. We have the oral word—

Q. Of the natives—and you have the oral word of Shattuck something about—that he will give you a right of way down there across the property too, have you? A. We have.

Q. And Mr. Reck?

A. I consider it so—from Reck. You are talking about that particular spot all this time?

Q. You know that Shattuck has applied for a patent and it is pending before the Land Office now for at least part of this rectangular piece of property near

(Testimony of R. A. Kinzie.)

where you have the black triangle marked the proposed 200-stamp mill?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I do.

Q. Now, then, coming on back up your proposed flume and tram line, you run along on this hill from Juneau?

A. We do.

Q. About how far up the hill?

A. That would be about 430 feet long there, perhaps a little more. [779]

Q. That is, do you mean 430 feet from the line of ordinary high tide on Gastineau Channel?

A. Yes; mean high tide.

By the COURT.—You mean straight up?

A. Vertical; yes, sir.

Q. How far would it be if you followed the surface of the ground up the hill?

A. I should say twice as far; perhaps a little more.

Q. How far up on this map and plat, what point, do you strike the property claimed by Reck and Caro?

A. At Wood's Gulch.

Q. Would you indicate it on this exhibit No. 11 of yours that has been identified?

A. It is either this point or this point—I have forgotten which.

Q. Mark it there, will you, by "m" and "n"?

A. Yes. (Witness does so.)

Q. Now, have you secured any right of way from

(Testimony of R. A. Kinzie.)

Caro and Reck across that property?

A. We don't consider it necessary.

Q. You know they have what they claim to be a valid mining claim there—a valid mining location?

A. It makes no difference.

Q. You contend, of course, you have a right to go over that property of theirs even if they have a valid mining location there, do you?

A. We have a right by condemnation.

Q. You claim you have a right to condemn a right of way across private property for private uses by condemnation, do you?

Objected to.

By the COURT.—He has answered he did. Objection sustained. [780]

Q. Now, as a matter of fact, though you have been claiming a right of way across that property by reason of you being a corporation, vested with the powers of condemnation, you have had some of your people over there to locate right over all that property, have you not—mining claims?

A. That was before we knew there was any mining claims there. Just as soon as I found it out I went to these people and asked them if they had mining claims there, and then I went on the ground and they showed me where their mining claims started.

Q. Some time last July you got very active up on Gold Creek and was prosecuting this scheme of good intentions very rapidly to the front, to open up this property? A. No, I couldn't say that.

(Testimony of R. A. Kinzie.)

Q. In July, on the 28th you had Mr. Datson make a location up there, did you? A. I think no—

Q. Location of lode mining claim, located July 28, 1910, and recorded on August 8, 1910—is that the Datson location?

A. That is not my recollection of the date—it might be.

Q. Location of water right by L. D. Mulligan on the first day of August, 1910, and recorded August 11th, 1910—that is about the time you had Mulligan go up there, is it not, to make a location?

A. Yes, sir; that is right.

Q. How do you know he went up there on August first?

A. Principally because he told me so and I saw the notice posted there.

Q. That is the way you get your information?

A. That is the way I get my information. [781]

Q. You had the location of the Bear lode made July 11, 1910, by W. Lindsay, didn't you—recorded August 8, 1910?

A. Yes, somewheres in that neighborhood.

Q. And you had another location, Bear #2, W. R. Lindsay, July 11, 1910?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Objection overruled. Defendant allowed an exception.

Q. Location Notice, Bear #2, W. R. Lindsay, July 11, 1910—I believe you say you had such a location as that made? A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. And the location of the Bear #3 lode, W. R. Lindsay, July 11, 1910—you had another location made by him, recorded August 8, 1910?

A. Yes, I think there are 6 or 7 Bear claims.

Q. And the Bear #4 July 11, 1910, recorded August 8th?

A. I think so, yes—in fact, I know so.

Q. And then the Bear #5 made by J. F. Tompkins July 11, 1910—that is another location you made?

A. Yes.

Q. Then you had the Utah #3 located by F. F. Summers, July 28, '10? **A.** Yes, sir.

Q. And the Utah #2 located July 28, 1910, by the same man? **A.** Yes, sir.

Q. These men are all in your employ over at the Treadwell? **A.** They were.

Q. They made these locations, did they not, for the defendant company in this case? **A.** They did.

Q. Would you indicate to the Court on this exhibit #11 approximately [782] what ground these nine or ten locations I have read to you cover?

A. They cover the ground starting from our Idaho down here to the point on the Utah claim—some point in here.

Q. It commences about the word—where you have a tunnel? **A.** The word “tunnel.”

Q. Marked on what claim?

A. On the Colorado claim on the east side of Gold Creek and around on the Gastineau Channel side to a point about 800 to a thousand feet. The Bear lodes are continued to our Summit claim—they continue to

(Testimony of R. A. Kinzie.)

and lap over our patented Summit claim.

Q. That series of claims that I have indicated—how many of them were you on the ground at the time they were located and saw them located?

Objected to as not proper cross-examination and immaterial.

Objection overruled. Defendant allowed an exception.

A. You mean, was I on the ground and saw the notices posted?

Q. Yes, at the time the location was made.

A. No, I was not.

Q. Now, as to the particular date that location was made with respect to the posting of the notice on the ground—you only take hearsay for that, is that right? I mean all these locations I have just questioned you about. A. No.

Mr. SHACKLEFORD.—The Bear or any of the locations in controversy in this case?

Q. I asked you, Mr. Kinzie, all that you knew as to the date that any of these particular claims were located on the ground—you necessarily know it by hearsay, don't you? [783]

Mr. SHACKLEFORD.—I desire to inquire of counsel what claims he includes in his question.

Judge WINN.—I include all the claims I have just mentioned to him.

By the COURT.—He means the seven Bears and two or three others, making eleven claims.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial and we move to

(Testimony of R. A. Kinzie.)

have counsel specify the claims in his question.

Objection overruled and motion denied. Defendant allowed an exception.

A. Some of them I saw the notices and some I did not.

Q. That is, you saw the notices at the time the claimant posted them on the ground or saw them there afterwards?

A. Saw them there afterwards.

Q. You were not on the ground on any one of these claims I have just mentioned to you in the previous question at the time the notices were posted there?

A. No, I was not.

Q. Were you on the ground at the time that the notice was posted on the Canyon lode claim?

A. No, I was not.

Q. Were you on the ground at the time that the notice was posted on the Oregon lode claim that was located by Datson? A. I was not.

Q. All, then, that you know about the time that that was done on the ground would be information you got from them or what you afterwards saw on the ground yourself? A. Yes, sir.

Q. When did you see the location of the Oregon which was located [784] by Datson—did you ever see that location on the ground? A. I did.

Q. When did you see that?

A. That might have been—it was a few days afterwards.

Q. You don't just remember the date?

A. No, I don't just remember the date.

(Testimony of R. A. Kinzie.)

Q. When did you see the location notice of the Canyon lode claim?

A. I saw that either the same day or the day afterwards.

Q. When did you see this water location that was posted on there by Datson—the first water location that was offered in evidence?

A. I think that was August third, I saw that.

Q. You saw it on the ground on August third?

A. Yes, sir.

Q. Would you be positive of that date?

A. Yes, I am quite positive of that.

Q. What makes you so positive?

A. No, I am not exactly positive—it is either the third or 6th, I have forgotten which of those days I went up there, but I think it was the third.

Q. I think that is what you stated this morning, it was either the 3d or 6th, on your direct examination.

A. Yes, sir.

Mr. SHACKLEFORD.—Are you referring to a water location by Datson?

Judge WINN.—Yes; I said the first water location made by Datson, that is, the first location he made—I mean the first water location on the ground, on the creek, in 1910 was [785] made by Mulligan.

The WITNESS.—Yes, sir.

Q. I had reference to that water location and I miscalled the name,—I meant to say Mulligan and that is the one you understand I was questioning you about—the Mulligan location?

A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. Do you remember what date in 1910 Mr. Bent and his party arrived here in Juneau?

A. No, I do not.

Q. Don't you know that Mr. Bent and Mr. O'Boyle and Mr. Briggs and his party arrived here on the 28th of July, 1910? A. No, I do not.

Q. When was the first time that you knew that that party was in town?

A. I think the first I knew about it—I think it was Mr. Mullen asked me if he could bring those people over, if I would show them around the works, and I told him I would—that was the party—O'Boyle was among them, and O'Boyle's son, and some others.

Q. You subscribe for the newspapers over here, one of them? A. I think both of them.

Q. Did you see the notice in the paper about these parties being here about that time?

A. I very likely did. I don't remember now whether I did or not.

Q. They visited with you over there some time shortly after their arrival here?

A. I think it was shortly after their arrival; yes.

Q. Don't you know they came here for the purpose of opening up this Ebner mining property on a larger scale than it had been run—didn't you know that was the object of those people [786] coming here?

A. I had a general idea they had taken over the interests of the Ebner Company, that is the way **I understood it.** We didn't talk about it at all.

(Testimony of R. A. Kinzie.)

Q. Upon the arrival of these parties here about that time, or shortly afterwards, you got pretty active up there in the Basin, didn't you, with your different clerks, etc., making location for the defendant company? A. I think not.

Q. You don't think so? A. No.

Q. Don't you think that the making of these eleven or twelve locations I have read over to you, besides the location of the Oregon claim and the location of the water right, and you commenced to put that little house up there—don't you think that was a little more activity than you had shown for a good many years past in Gold Creek?

Objected to as argumentative. Sustained.

Q. Well, all these locations I have read to you were made about the time or after the arrival of that party here in town?

A. No, they were made just after the arrival of Mr. Bradley.

Q. They were made shortly after the arrival of Mr. Bradley?

A. They were made shortly after the arrival of Mr. Bradley.

Q. If the Bent people got here on July 28th—there was quite a number of them made shortly after that date?

A. Yes, I think Mr. Bradley either came up on the same boat or just after they came up—that thing had all been worked out for Mr. Bradley and submitted to him when he arrived and he approved the plan, and we went ahead and carried it out.

(Testimony of R. A. Kinzie.)

Q. Mr. Bradley got here about the same time Mr. Bent got up here? [787]

A. Just before or just after.

Q. And Mr. Bradley is the consulting engineer of the defendant company and also of the Treadwell Company and several other big mining companies?

A. He is the president of that company.

Q. He is the president of the defendant company?

A. Yes, sir; and he is also the consulting engineer.

Q. Where does he live? A. In San Francisco.

Q. He is in the mining business generally, in a good many states and territories of the United States? A. He is; a great many of them.

Q. Not only in Alaska? A. No.

Q. He keeps pretty well informed on all of the methods of mining development and the development of mines along the coast here and in the coast states?

A. Only in a general way. He is not as active in outside properties as he was a few years ago.

Q. He is very active, though, in property in which he is interested? A. Very active.

Q. And he is president of the defendant company?

A. He is.

Q. Did you go up there with any of these parties that made any of these locations that I have just mentioned to you? A. Did I go up with them?

Q. Yes. A. No, I did not.

Q. They advised with you before they went up there? [788]

A. I gave them their directions, and some of them

(Testimony of R. A. Kinzie.)

a sketch—in fact, I believe we furnished them all a sketch.

Q. You didn't have to resort to any Government survey map and plat to understand that ground up there at this time, did you—you knew where all your work was, didn't you, at the time these men went up there? A. Where our claims were?

Q. Yes. A. Yes.

Q. And your claims represented on this exhibit "11," that is counting out those special locations that were made in 1910 it represents all these marked in pink on this map? A. Yes.

Q. Now, then, what is this long rectangular part of this map that runs from what you have marked on it—proposed 200-stamp mill—up touching the bed of the Alaska-Juneau property?

A. That was one of a number of schemes that were proposed as an outlet and is still considered as an ultimate outlet—that from that tunnel we can get more head at the Alaska-Juneau than by the other tunnel—by that I mean we can get more back of our ore bodies—it means ore above you.

Q. When did you take up that property in that end of the strike?

A. I think that was done about seven years ago—that must be nine years ago we originally started.

Q. Mr. Alfred Williams made the survey of these claims?

A. No; he did the patent survey of all except the Utah.

Q. I mean the patent survey.

(Testimony of R. A. Kinzie.)

A. Yes, sir, the patent survey.

Q. And you think you took up those claims about nine years ago.

A. I should say so—if not, it was about that time. [789]

Q. About that time?

A. I don't remember offhand.

Q. Did you take them up as mining claims?

A. Yes, sir.

Q. Is it not a fact as you stated a while ago that the principal object of taking up that property was to have a tunnel right up through there to tap your ore bodies in the upper Basin, in the Alaska-Juneau property, and bring it down on a gravity system to the shore here of Gastineau Channel to work the property?

A. That idea was originally proposed—there was a number of them proposed. There was two or three others and it was taken up and we had spent enough money on it and didn't wish to abandon it, and we went to patent with it, so as to protect that.

By the COURT.—It has been patented?

A. It has been patented.

Q. When did you abandon that scheme of opening up the property through that ground and by means of running a tunnel through it?

Objected to. Objection overruled. Defendant excepts.

A. I should say it was at least six or seven years ago—at least six years ago. The figures I am giving you are not exact figures, but they are within a year.

(Testimony of R. A. Kinzie.)

Q. You said you had some other schemes that were talked of in addition to the one of coming down Gold Creek which you are now claiming. What was the others?

A. None went very far. One was to put a sample mill up in the Basin and the one mill on the beach—there was a number of schemes. [790]

Q. Now, as a matter of fact, is not this true—until Mr. Bradley came up, about the time the Bent party came up here in the summer of 1910, you never had concluded up to that time but what you were going to stick to this old plan of operation by the triangular strip that runs up to the 200-stamp mill, up to your property? A. No, it was just the reverse.

Q. Is it not a fact that when Mr. Bradley arrived here in July or August of 1910, about the time the Bent party arrived here, you and he got together then and you concluded upon this plan of opening up by going up Gold Creek? A. Not at all, no.

Q. Now, I wish you would tell the Court what you had done looking towards opening up that property in the manner you are contending now you want to open it up, prior to the time that Mr. Bradley arrived here in 1910 and when the Bent people were on the ground?

A. We had extended our lower mill tunnel, that is the tunnel in the Basin—it is marked on that exhibit "11" as B—that had been extended over to what is known as the Jones fault—it is a branch from the Silver Bow fault, and that is a body of ore

(Testimony of R. A. Kinzie.)

that would show in what is known as the Wallace claim.

Q. This tunnel that commences at B on exhibit 11, how long is that tunnel? A. I think 1086 feet.

Q. That is approximately? A. Yes, sir.

Q. When did you complete it to that extent?

A. I think that was the year before last, the season before. [791]

Q. Now, then, another one of your tunnels is this one you have marked commencing near the word "Mill on exhibit 112, and runs in a southerly direction and then turns at another angle— Up to the summer of 1910 how much had you driven on that tunnel? A. That had been entirely driven.

Q. To what extent?

A. I think that is practically a thousand feet.

Q. Now, how much of it runs in a straight line before you turn this angle of, as you say, 45° —do you know how much is on either side of that angle?

A. I think there is about 380 or 400 feet. It comes to a point under our long dip and then turns and comes along under the ore body.

Q. Approximately, what point on this exhibit 11, if you put these tunnels on in their entirety, would they reach?

A. Well, you can get that by taking a scale.

Q. Take the scale—you are running between the letter "B"—and mark a "C" at the other end.

A. That would be the other end.

Q. And I wish you would mark the other approximately—mark that "X" and "Y," that last one—

(Testimony of R. A. Kinzie.)

“X” at one end and “Y” the other.

A. That is it approximately. (Witness marks it.)

Q. Now, what other underground work had you done on this property prior to, say, July, 1910?

A. The tunnel from the discovery pit—the drift from the discovery pit tunnel had been extended out to the fork under Quartz Gulch.

Q. That was a drift from which one of your tunnels?

A. It is not one of these tunnels—it is another tunnel.

Q. Can you indicate that approximately on the map? I don't care [792] for the exact location.

A. It is somewhere up here (indicating). The tunnel goes in, I think, 350 feet and then branches off and cuts over—they have got these tunnels altogether too far west—it branches over here.

Q. You have marked that with a lead pencil mark on the left-hand side of the line running through the figure “30”? A. Yes, sir.

Q. Any other underground work? A. Yes.

Q. Where was that?

A. The raises—there was a raise put up under the Nugget Gulch pit, that is the one known as our foot-wall, from the lower pit tunnel—two raises, one ninety feet and the other some hundred feet put up under the lower pit tunnel from a point just east of Quartz Gulch.

Q. Are those upraises you speak about in this last matter of underground work all connected with the other tunnels you have just testified concerning?

(Testimony of R. A. Kinzie.)

A. Yes.

Q. Is that the only underground work?

A. Other shoots, raises and pits and things of that sort.

Q. Any connection with these three tunnels?

A. There is another tunnel over in Quartz Gulch that has since been mined out and another tunnel called the Kennedy tunnel. We got the footwall further to the east—that was afterwards abandoned.

Q. These last tunnels, the underground work which you have referred to, would be to the northward on this map No. 11 of the words “G. M. Company”?

A. Yes, they would be northeast—almost north.
[793]

Q. They would not extend any lower down towards the shore of Gastineau Channel than the words “G. M. Company,” would they?

A. No, they extend out to the fork—they didn’t pass the fork except to poke in it and see what was in it.

Q. That is the only underground work you had on this property up to the year 1910? A. No.

Q. Some more yet?

A. We did quite a little work over on the Colorado—that was the starting of those original tunnels there and then there was quite a little trenching work done to locate the foot-wall. The ore body has been faulted down from the brow of the hill into the Basin; there is a long throw there and that fault was followed up and the position of the ore body deter-

(Testimony of R. A. Kinzie.)

mined there so that a tunnel coming in would strike the ore body, as known in the Ebner mine, which comes through the Humboldt property, comes over the top—would strike that first.

Q. I want to know just approximately the place and the kind of underground work you had.

A. In a general way, in addition to the other work that was done there, that was the extent of the underground work.

Q. The tunnels prior to 1910 that you had on the Oregon lode claim—what tunnel do you mean—do you mean this new tunnel that you began to drive? You didn't have any portion of that, did you?

A. Yes, there was tunnel started there.

Q. There was a tunnel started on the Colorado claim prior to the year 1910? A. Yes.

Q. Where was it started with reference to where you are driving [794] the tunnel now?

A. It was below that point.

Q. Was it done in the way of prospecting before patenting, on the Colorado claim?

A. No, that was the object of the Colorado claim, that was the general idea at the time those claims were located, to cover that portal, and the Colorado claim and Idaho claim went to patent for the reason that that portal was on them at that time.

Q. When did your company locate the Colorado and Idaho claims?

A. They are old locations—they were located before I came here.

Q. They are about as old a location as a lot of the

(Testimony of R. A. Kinzie.)

other locations up there of the Alaska-Juneau Company? A. No, they are much younger.

Q. Who did locate them?

A. Archie Nevins and I think J. P. Corbus.

Q. That was in '99? A. Yes, sir; it was.

Q. The tunnel you are driving now you commenced in 1910? A. Commenced in 1910, yes, sir.

Q. You commenced the tunnel you were driving on the Colorado, in 1910? A. Yes, sir.

Q. This work that you had been doing on the Alaska-Juneau Company's property prior to 1910, leaving out what was done on the Colorado and Idaho claims, but the work that is done there would have been as feasible a scheme for the opening up and mining of this property through a tunnel through this long strip that commences at the proposed 200-stamp mill and goes up and strikes the body of your claims? [795] A. No, it was not.

Q. The tunnels, etc., that you ran up there—wouldn't they serve your purpose just as well if you had run your tunnel up as I have indicated as it would if you ran the tunnel the other way?

A. No, it would not.

Q. You say, then, that the upper work that was done on the Alaska-Juneau property would not have been as beneficial to you in opening up and milling the ore on that property through a tunnel run up this long narrow strip from the proposed 200-stamp mill marked there, up to the body of the tunnel and would not serve your purpose as well if opened up in that way as it would to open it up under this plan that

(Testimony of R. A. Kinzie.)

you are now contemplating?

A. No, I didn't say that.

Q. What about it—would it or would it not?

A. Part of that question I can answer yes and part of it I can answer no.

Q. Wouldn't this work that you have done up here on these three tunnels you have described, that you did on the upper part of the property belonging to the Alaska-Juneau Company and which you have marked on this exhibit "11," be just as much assistance to you in milling and working this property by reason of the scheme you have to run up this long narrow strip commencing on your exhibit at the proposed 200-stamp mill and running up to your property as it would to work it through the other tunnel you are now contemplating to drive from the Colorado claim?

A. Granted we had the tunnel and the water it would, yes—it is self-evident from that map that it would not be anywhere near as economical. [796]

Q. One scheme would be as feasible as the other so far as getting the ore out of the property?

A. No, it would not.

Q. Didn't you say a while ago if you ran the tunnel up this long narrow strip to the proposed 200-stamp mill that would really be a better way to work the property, but would cost more, be somewhat more expensive, but you ultimately expected to work the property that way? A. I did not.

Q. Didn't you state a while ago that by running a tunnel up over this narrow strip of land you would

(Testimony of R. A. Kinzie.)

get more overhead?

A. I said the tunnel was started on the Summit claim at an elevation of 620 or 630 feet above sea level, and that scheme was abandoned long ago in favor of the shorter route.

Q. Did you state a while ago if you had run a tunnel on this scheme that you first had for opening up the property, up this long strip, commencing at the proposed 200-stamp mill and striking the body of your Alaska-Juneau Company property, that really you would strike more ore overhead or some term you used similar to that?

A. No, you are twisting that thing a little bit. If you would ask me about the original scheme I would say no; if you would ask me if a scheme such as that could be pursued I would say yes.

Q. The original scheme you had was to run a tunnel in some manner, but you did not indicate where you would commence the tunnel or anything about it?

A. The tunnel has been driven in a number of feet.

Q. You commenced the tunnel there, as I understand it, and drove it in a little ways and then concluded the tunnel was not being properly driven—drove it about 600 feet and then [797] concluded it was not as feasible a way to drive the tunnel to work the property as some other way to drive a tunnel to work the property?

A. No; there were very good reasons why it was abandoned.

Q. Then, I understand you to say there would be

(Testimony of R. A. Kinzie.)

a better plan—to drive the tunnel through this long strip to open up the property of the company, a better plan than the one you had undertaken over that same ground?

A. There is a better plan than our original scheme at that particular point?

Q. Yes. A. There is a better; yes.

Q. Now, then, these claims, the Idaho and the Colorado and the old Oregon claim, as located by Corbus were all located about the same time?

A. Yes, there is a group in there located the same time.

Q. By a man named Nevins?

A. Nevins located some of them.

Q. And the Wyoming claim, too, was that located about the same time? A. The same time.

Q. Were you in the company's employ at the time the Colorado and the Idaho placer were patented?

A. I was.

Q. 1904? A. I was.

Q. Do you know anything about the surveyor going up to survey these or did McDonald have control of that part of the business?

A. I know when he went.

Q. Was it your business to look after that or McDonald's?

A. Why, McDonald made the arrangement, I think, of going on to [798] the ground.

Q. You know as a matter of fact when you had that survey made for the Idaho placer and the Colorado placer that your company was having all the

(Testimony of R. A. Kinzie.)

ground surveyed in there that you made any claim to, don't you? Didn't you know that?

A. I knew the reverse. I knew that was not the case.

Q. You knew that was not the case?

A. Yes, sir.

Q. Why didn't you have the rest of the ground surveyed there if you attached so much importance to this location?

A. There was a number of reasons why I didn't do it.

Q. Now, then, when the Colorado lode claim was surveyed you found that there was a conflict of that with the Parish #1 lode claim—you were up there on the ground and found out about that yourself? You were up there on the ground before adjustment was made of that case? A. I was.

Q. The dealings were had between you and Mr. Ebner?

A. Mr. Ebner came to me and claimed that he had some ground there.

Q. And then the final consummation of the settlement was made otherwise than through you?

A. No, it was not; it was made through me.

Q. But you didn't sign the deed, the papers, concerning it?

A. I have no authority to do that.

Q. But you took a material part in the settling up of that matter—you were up over that ground pretty thoroughly at that time?

A. I was. I knew the ground very well.

(Testimony of R. A. Kinzie.)

Q. You say there were several good reasons why you didn't go ahead and patent the Oregon lode claim at that time. What [799] were those reasons?

Objected to as incompetent, irrelevant and immaterial and not cross-examination.

Objection overruled. Defendant allowed an exception.

A. The principal thing at that time—the idea was simply to patent the ground through which our tunnel and dams would be opened and also the ground we had which had just gone to patent with the rest of the tunnel site, that gave us a complete patent strip from the mouth and dump of our tunnel on Gold Creek right into the Basin.

Q. What tunnel did you have in Gold Creek at that time?

A. We had started and the surveys were made and the lines all brushed out for a main tunnel from a point just below where our main tunnel is at present.

Q. How much did you drive on it? How much had you driven?

A. I should say perhaps thirty or forty feet.

Q. You didn't attach, then, much importance to the remaining part of the property you thought you had up there then? A. Indeed, yes, I did.

Q. What was the reason you did not include it in this survey or patent?

A. We went to patent with the principal claims we had. We had a number of other claims we didn't

(Testimony of R. A. Kinzie.)

go to patent with—there was no immediate necessity to go to patent.

Q. You didn't know when the Colorado claim was patented anything about the Parish #2 claim?

A. We knew Ebner laid claim to some ground there—that was the Number 1. We knew nothing about the Parish #2.

Q. When you were up there examining the ground on the Parish #2 lode claim at the time this adjustment was made with Mr. Ebner, you didn't find any stakes there of the Parish #2 [800] lode claim, did you? A. No, I did not.

Q. Didn't find any at all? A. None at all.

Q. You knew Mr. Ebner was laying claim at that time, however, to the Parish #2 and Parish #1.

A. He came to me and told me so, and it made very little difference to us—all we wanted was the right of way for our tunnel through there.

Whereupon court adjourned until to-morrow morning at 10 o'clock.

June 3, 1911.

Continuation of the cross-examination of Mr. KINZIE.

(By Mr. WINN.)

Q. Since the Colorado claim was surveyed for patent in 1904, what work, if any, have you done on the Colorado claim, down say to the year 1910?

A. I think nothing has been done there except the survey lines that have been run, connecting that for a tunnel through there.

Q. In fact, there has been nothing done up there

(Testimony of R. A. Kinzie.)

except what you have just mentioned since these claims went to patent on any of the bunch of claims, the Idaho, Colorado or the Oregon lode claims, since 1905? A. Yes, sir.

Q. What did you do on the Oregon lode claim?

A. A detailed geological study has been made of all that ground.

By the COURT.—Is it patented ground?

A. Yes, sir. [801]

Q. You have not done any work that was underground work, or running any tunnels or any work of that kind on any of this property since 1905?

A. There has been no tunnels run at all until last year.

Q. What did you do on the Oregon claim, if anything, since 1905?

A. A detailed geological study was made of that entire country; the maps that were used in the geological study were made; a line of tunnel was brushed out and two surveys, I think, were made connecting the proposed portal of the tunnel with a point in the Basin.

Q. You have described approximately what has been done since 1905 without going into details?

A. Yes, sir.

Q. When was this survey of this proposed tunnel you speak of brushed out on the Oregon lode claim—you remember what year? A. No, I do not now.

Q. Approximately what year?

A. I think that was either three or four years ago that work was done.

(Testimony of R. A. Kinzie.)

Q. I call your attention to a map that is attached to your answer in 803-A, which answer has been offered in evidence in this case and is marked Plaintiff's Exhibit "CC," and ask you if you are acquainted with that map which is attached to your answer in that case? A. I am.

Q. That was made by some of your engineers?

A. It was.

Q. Now, Mr. Kinzie, for the sake of brevity in asking these questions, I am going to refer to the tunnel site of the claims that you have patented, commencing on this exhibit 11 of yours, near the proposed 200-stamp mill, that long triangular [802] connection that is made up of the continuous property up the hill—we will call that the Gastineau Tunnel site and we will refer to the one that goes up Gold Creek as the Gold Creek tunnel site and works. Now, on this map that is attached to the answer in 803-A in this case you have laid out your proposed tunnel through this Gastineau Channel tunnel site?

A. We have, yes, sir.

Q. It extends from Gastineau Channel on up to the bed of the Alaska-Juneau Company's property and after getting perhaps several hundred feet on the property, it turns at an angle of about how many degrees, approximately?

A. That would be about thirty degrees.

Q. And you proposed to run that tunnel up to tap these workings that you have testified concerning yesterday, those three tunnels, etc., that were run on the upper part of the defendant company's prop-

(Testimony of R. A. Kinzie.)

erty? A. That was proposed, yes, sir.

Q. The one that you have laid out from the Colorado claim which belongs to the Gold Creek system, you have virtually laid that out as paralleling a portion of the Gastineau Channel tunnel, have you not?

A. Yes, the north end.

Q. How much work did you ever do on any tunnel that was commenced on the Gastineau Channel tunnel site?

A. Why, sufficient work was done there to patent all except the Utah claim.

Q. On the tunnel that you commenced down near Gastineau Channel?

A. It was started at a point about 620 or 630 ft. vertically above the mean tide. [803]

Q. And run into the mountain there how far?

A. I have forgotten. It was sufficient, anyway, to patent those Summit claims.

Q. Can you remember approximately the distance in from the face of the tunnel?

A. I should say 100 or 150 or perhaps more feet—that is simply figuring from what work was necessary to patent. I don't remember now.

Q. Did you drive that tunnel in there for the purpose of patenting the claims or start it in there with the expectation of continuing it on in into the body of your property up above?

A. For both reasons. The principal reason for starting it at that time was to do the necessary work to patent those claims, with the exception of the Nevada claim which shows at the upper end and the

(Testimony of R. A. Kinzie.)

Utah at the lower end; they were not patented.

Q. That is the tunnel you undertook that you stated yesterday would hardly be a feasible and practical tunnel to continue on for the purpose of opening up and working the property?

A. It was not considered the best site.

Q. When did you do the last work on that tunnel?

A. That was done the year they were patented.

Q. Are you sure of that? A. Yes, sir.

Q. What year was that?

A. I don't remember—they went to patent just as soon as that work was finished.

Q. You mean the year the patent was granted?

A. That must be. The Utah was patented afterwards, I think. I should say four or five years ago.
[804]

Q. Of course, the patent would be the best evidence?

A. Yes, sir; it was, of course, some time before the patent was issued.

Q. Alfred Williams made the survey of these claims that run along the Gastineau Channel tunnel site and they were patented on the survey that he made?

A. The original survey was made by Tappen—Tappen & Brown—but I think the final survey for patent was made by Williams.

Q. You stated in your direct examination yesterday and probably on your cross-examination something about a five-stamp mill. I wish you would indicate on your exhibit No. 11 about where that five-

(Testimony of R. A. Kinzie.)

stamp mill was built.

A. The five-stamp mill was at a point marked "B," right below the mouth of the mill tunnel.

Q. That mill, I believe, you say was built after you came here?

A. Not in that position, no. It was up on the side line of the Aurora claim. It was moved down the hill, at a point below the mill, for the purpose of sampling that tunnel; that is an old mill.

Q. Does it stand there yet?

A. It is practically dismantled now.

Q. There is some part of the building there yet?

A. Yes.

Q. When was it you built the 30-stamp mill up there?

A. That was built before I came here. I don't know definitely the date.

Q. It was here when you came here?

A. It was here when I came here.

Q. That 30-stamp mill has been run each season since you have been here? [805] A. Yes, sir.

Q. For about how many months out of the year?

A. I would say it would average—my recollection is 5.2. I saw the average the other day.

Q. You have run it at its full capacity each year—30 stamps? A. No.

Q. Not the full capacity?

A. No; we have had parts of the mill on special work, on sorting work and stamp mill work, that is special sampling work; for instance, we would pick out a certain place that we would want to run a

(Testimony of R. A. Kinzie.)

couple of hundred tons and set aside five or ten tons and run that particular lot through separately.

Q. Are you a stockholder in the Alaska-Juneau Company? A. I am not.

Q. How long has Mr. Bradley been a stockholder in it?

Objected to as not cross-examination. Sustained.

Q. You stated yesterday that you and Mr. Bradley had planned this method of opening up and developing this property on what is called the Gold Creek system and Mr. Bradley was now president of the Alaska-Juneau Co. How long has he been president of it?

A. Ever since I have had any connection with it.

Q. And he has been one of the large stockholders, has he not, during that time?

Objected to. Objection overruled. Defendant excepts.

A. He had been a stockholder—I don't know how large a stockholder. He has not anywheres near the control.

Q. Do you want the Court to understand that ever since you have been here this thirty-stamp mill has been devoted [806] principally to sampling ores or have you been running that as a commercial plant?

A. Why, it has been used primarily as a sampling mill—that is all it was good for. It couldn't be used for anything else. It never has been a commercial proposition, that 30-stamp mill, since I have been here, never attempted to make it so.

(Testimony of R. A. Kinzie.)

Q. You know the Ebner mill on this side has only been a ten or fifteen stamp mill and that has been run as a commercial proposition?

A. I examined it five or six years ago—yes, I know what it was.

Q. Do you want the Court to understand that your annual reports do not show—that is, the Alaska-Juneau Company—that you have been running that mill up there for the last few years as a commercial proposition?

A. I distinctly say that that mill has been run at a loss.

Q. You have been running as a commercial proposition, have you not? A. No, we have not.

Q. Don't your annual reports so show?

A. They do not.

Q. You have been mining and milling ores from those tunnels you described yesterday through this mill, have you not? A. Some ore; yes.

Q. You spoke yesterday about one tunnel that you had up there that you worked all the ore out of through this mill.

A. No, if I did I made a mistake, because the lower tunnel is the principal tunnel. All we have ever taken from those tunnels, I think they have taken three slices off the side [807] for sampling purposes and that is all the ore that has come from our principal tunnels up there.

Q. How many tons per day will one of those stamps crush? A. About four and one-half tons per day.

Q. And four and one-half times thirty would be

(Testimony of R. A. Kinzie.)

the number of tons you would put through in a day?

A. If run continuously; yes.

Q. And you would run pretty near on an average of six months out of the year?

A. No, we have not. A crew has been up there about 5½ months each year.

Q. You commence each year, do you not—it will not vary only a few days—you commence the latter part of May and run June, July, August, September, October and sometimes into November?

A. I don't remember the mill starting in May. It might have. It usually starts along the first part of June.

Q. Did you start this year in May?

A. We have not started yet.

Q. You know the Perseverance started in May?

A. I understand they are dropping 30 or 35 stamps.

Q. You know that the Perseverance has started every year since it has run its stamp-mill between the 25th and the 30th of May?

A. I don't know that.

Q. You start yours about the first of June?

A. No, in the early part of June.

Q. You wouldn't testify positively that you haven't started in May some of the years?

A. No, I would not. [808]

Q. Now, passing over those ten or eleven years you have been there that that thirty-stamp mill has been running, you want the Court to understand that you were running that as a sampling proposition?

(Testimony of R. A. Kinzie.)

A. That is the principal object of operating that mill; yes.

Q. You say it has not been run at a profit?

A. It has not.

Q. Is it not a fact that it has not been operated at a profit simply because some of the stockholders want to get the stock at a low rate?

A. I never heard of it.

Q. You know that Mr. Bradley has lately come into control of that mine up there?

A. I know he has not.

Q. He has not recently made a purchase of a great lot of stock of that company?

A. No, sir; he has not.

Q. Has any of the stock changed hands recently?

A. I don't know.

Q. The books are not kept here?

A. The stock-books are not; no.

Q. Where are the two claims known as the Utah #2 and Utah #3?

A. They are two claims located to the west of our Utah claim.

Q. Where is that on this exhibit 11?

A. One of the claims would be about where that stamp-mill is shown there—that is the proposed 200-stamp mill; it includes the space where the words are written in there.

Q. And the Utah #2 and #3, do they join?

A. Yes, they join.

Q. Those were taken up last July or August?

(Testimony of R. A. Kinzie.)

A. They were, yes, sir; last year some time.

Q. Taken up in behalf of this company?

A. They were.

Q. Those claims overlap some other prior located claims down there, don't they?

A. I believe they do; yes.

Q. That is the property that belongs to Reck and Shattuck?

A. I have since learned that it did; yes, sir.

Q. Did you go on the ground when those two Utah claims were located down here along Gastineau Channel, where this proposed 200-stamp mill was located?

A. No, I did not—at the time they were located?

Q. Yes.

A. No, I think I was there two days afterwards.

Q. You directed some one to go over there and make those locations? A. I did.

Q. And you afterwards found that they did cover part of the ground that Shattuck & Reck have made application for patent for? A. I did.

Q. Going back to your opinion as to the depth of the slide on the Parish #2 lode claim at its southeasterly end, when did you say you first made an investigation as to that slide?

A. I don't believe I said.

Q. When did you?

A. I have known in a general way of the slide there for a long time. I went up there last Sunday to make sure, to look at it in detail.

Q. Who went with you? [810]

A. Mr. Whalen and Mr. Stewart.

(Testimony of R. A. Kinzie.)

Q. They examined it with you? A. Yes, sir

Q. There is considerable snow up there on the ground?

A. Practically none at all there except right in the pit, a little snow there.

Q. Practically none at all? A. Yes, sir.

Q. Did you go over, all over the lower end of the Parish lode claim? A. I did.

Q. And they went over with you?

A. No; I think they spent most of their time in surveying the pit. I wanted to see how deep it was and what the outline of it was. There are really three pits running in succession.

Q. How far from the southeasterly end line of the Parish lode claim did you go—down towards the creek? A. Went right to the creek.

Q. Then, did you examine over every bit of that claim, say from the claim up the hill to the southeasterly end line of the Parish lode #2?

A. Why, I went up and down there three or four times, I think, virtually to the creek. There are two slides there and I was trying to follow out where the junction was.

Q. Do you want to testify to the Court that in your opinion you think that slide is about a uniform depth of 80 feet over all parts of the Parish #2 that lies between the creek and the upper end line of the claim? A. No, I do not.

Q. What portion of that ground do you want the Court to understand that the slide is, in your judgment and opinion, about [811] 80 feet deep?

(Testimony of R. A. Kinzie.)

A. From 50 to 80 feet deep, I should say, in what is known as the main Borean pit. The end line of the claim passes through the Borean pit. To tie it down definitely, I should say, if you take the point where the line passes through the Borean pit—

Q. Do you want the Court to understand that it is your judgment and opinion that in sinking a hole or a shaft in the Borean pit that you have to go down between 50 and 80 feet before you strike bedrock?

A. From the surface of the slide; yes, sir.

Q. I mean from the surface of the ground as you find it there now—I don't care whether you call it slide or not.

A. No; I think I would dig the distance at the Borean pit that has been taken out.

Q. How far has it been taken out?

A. I should say 20 to 25 feet in depth.

Q. Then, you say that you would have to go about how many feet, in your judgment, before you would find bedrock?

A. At that point, I should say we would have to go 25 or 40 to 50 feet more.

Q. That is based on your opinion formed from an examination you made on the ground there and not from any actual excavation?

A. No, I made no excavation.

Q. If it should appear from people who worked there that they did not have to go anything like that depth, you wouldn't want to put your opinion against the actual testimony?

(Testimony of R. A. Kinzie.)

A. I would like to know how he can show what he called bedrock—there is slabs there as large as this room.

Q. How many of those slabs have you discovered there? A. I have only seen one. [812]

Q. And where was that? A. In the Borean pit.

Q. In the pit? A. Yes, sir.

Q. Isn't there snow in the pit? A. No.

Q. There is no snow in it?

A. There is a little snow in the open cut there, but in the Borean pit the snow is out.

Q. Did you go down in it? A. I did.

Q. And you found what you call a kind of boulder?

A. Why, you could call it a boulder—it is a piece of rock that has come from the cliff above, from the main ore body above. It is an entirely different character from the bedrock in that country.

Q. That is in the bottom of the pit?

A. It is in the side of the pit and extends down into the bottom.

Q. Has there been any slide in the bottom lately from any indications? A. I think not.

Q. You think the bottom of that pit is in the same condition it was when most of the work was done there in cleaning it out? A. Yes, sir.

Q. That is your opinion?

A. That is my opinion.

Q. And you find it has some sort of formation on the bottom of the pit that you spoke of?

(Testimony of R. A. Kinzie.)

**A. No, I didn't find it in the bottom. It was on the northeast* [813]

Q. How far from the bottom?

A. It goes right down—goes down to the bottom of the pit.

Q. What did you find on the bottom of the pit?

A. Slide rock.

Q. That is your opinion—it is slide rock?

A. Yes, sir; it is a very positive opinion.

Q. Now, the slide there that you say you estimated the various depths that you have stated—there is nothing to tell as to when such a slide took place, is there? A. No, there is not.

Q. Nothing to tell at all? A. No.

Q. There is no indication of any length of slide that would make it such a depth as that?

A. I haven't seen any.

Q. You have no means of knowing the topographical condition of that part of the claim as it was before the slide, have you?

A. In a general way, yes; in a particular way, no.

Q. It would be an opinion of yours?

A. Yes, it would be an opinion.

Q. You don't know whether or not it was level and after the slide came down there, that it would make it a uniform depth all over, do you?

A. The slide is not uniform in depth; no.

Q. There may have been a lot of higher places there where the croppings of rock in place bearing metal were there before the slide came and then those

*Owing to defective carbon copy, omitted words do not appear in original Certified Transcript of Record.

(Testimony of R. A. Kinzie.)

bumps would be closer to the surface than the rest of the surface?

A. Not with the same character of rock that shows there. It is an entirely different rock. [814]

Q. If there had been any surface ground there that was much higher than the surrounding surface ground you would have no means of testifying concerning whether or not such was the case except as a mere opinion, would you?

A. As to the appearance of the rock—why I would be, I might say absolutely, positive.

Q. That is, you are testifying to your opinion, are you? A. Absolutely so; yes.

Q. That is an expert opinion?

A. Why, you can consider that just as you please.

Q. You have no means of knowing the topographical condition from the view of it with your eye, so you have to examine it as an expert and give your positive opinion to the Court that such was the case?

A. Do you mean as to the bedrock or the rock that shows in the pit at present?

Q. I mean whether or not you knew anything or could tell anything about the surface of that ground there before the slide took place?

A. Yes; I think I can tell very closely the surface of that ground before the slide came.

Q. That would be merely an opinion?

A. Yes, that would be merely an opinion. I haven't seen the bedrock.

Q. Do you want the Court to understand that it is your opinion that the surface of the ground there

(Testimony of R. A. Kinzie.)

was absolutely flat before the slide was made?

A. No, it wasn't absolutely flat—none of that country.

Q. And you don't want the Court to understand that you are testifying that that slide is anything like a uniform depth [815] over that entire amount of the surface of the ground of the Parish lode claim that lies between the creek and the upper end line?

A. No; it starts from a feather, comes to a deeper part and then gets thin again.

Q. How much of this big slab that you testified about as being in the Borean pit, on the side of it, is exposed?

A. Why, we have introduced a photograph that shows it very distinctly.

Q. You photographed it down in the pit?

A. Yes, we have three photographs.

Q. How much of this slab appears in the bottom of the Borean pit?

A. The actual bottom of the pit is slide.

Q. A recent slide? A. No, I should say not.

Q. You say it is such a slide as in your judgment occurred at the same time as the other slide you have been testifying about, that is the main slide?

A. Yes, there has been sloughing from the side, of course—as a whole, the slide there is of the same character.

Q. In this examination that you experts made up there last Sunday is this the only place that you found the ground bared—any of the upper surface?

(Testimony of R. A. Kinzie.)

A. No, there was one point that we were in doubt about.

Q. Where was that?

A. That is where the Borean pit passes through a ground sluice into a little open space there and that is one of the things that is making me so very positive about the bedrock, because if that is the bedrock, it confirms [816] absolutely the character of the rock above that point.

Q. Now, how far did you extend this examination—clear down to the creek?

A. Right down to the creek; yes, sir.

Q. Where did you find the thinnest part, in your judgment, of the slide?

A. As it comes to the creek it feathers off to nothing on that hogback that runs—it would be almost due east of our cabin.

Q. What, in your judgment, is the deepest part of that slide?

A. The deepest part of the slide I should say would be to the northeast of the Borean pit—no, it would be southeast. The Borean pit is a bite right out of one side of the slide—that is what you might call the southeasterly slide.

Q. You contend, do you, that so far as your judgment is concerned, there is no mineral-bearing rock, in place, at all between the creek and the upper end line of the Parish lode #2? A. No.

Q. You make no such contention as that?

A. No.

Q. Your canyon claim, as you claim it is located,

(Testimony of R. A. Kinzie.)

takes in a part of the Parish lode claim #2, does it?

A. I think the discovery is on the Parish—it is over the line that has been shown of the Lotta. We located it with the idea that it was above the Parish line.

Q. Have you ever read the location notice of the Canyon claim? A. Yes, I did, at the time.

Q. You know in your Canyon claim location notice you say you commence at your dam?

A. No, it is located just above the dam.

Q. Your location notice says your discovery and I think your [817] notice, too, is made several feet up, about 60 feet up Gold Creek from where your tunnel is placed in the creek, do you remember that? A. Yes.

Q. Then, if your dam is on the boundary line between the Parish #2 and Lotta your discovery on this claim is on the patented ground of the Lotta, is it not?

A. I haven't testified it is on the line—I don't think it is.

Q. I am putting you a hypothetical question: I say, if your dam is on the common side line of the Parish #2 and the Lotta claim, then your discovery for the Canyon claim is up on the patented ground of the Lotta?

A. If I assume your hypothesis, yes, it would be.

Q. You testified in one of those cases when an application was made for a temporary restraining order, did you not—you were put on the witness-stand?

A. I testified in a number of them; yes.

(Testimony of R. A. Kinzie.)

Q. I will ask you when you first discovered any of what we claim to be the corner posts, the witness posts or monuments on the lower side line of the Lotta claim?

A. Why, I think the first time I ever went right up to the post was last Sunday. I have seen the stakes and the brushed out line a number of times.

Q. Where did you see that? The one that you saw last Sunday, where did you see it?

A. It was on the hillside above Gold Creek.

Q. Near that cabin—is that the one? A. Yes.

Q. That is the one you have heard a lot of witnesses testify concerning in this case?

A. Yes, sir. [818]

Q. Is that the first time you knew what you take to be one of the lower side lines of the Lotta lode claim stakes?

A. No, there is a stake that was afterwards marked as a witness stake on the side of the road. I have known that stake for a long time.

Q. You testified in the application for a restraining order in 803 that you say that stake several years ago? A. Yes, sir.

Q. That is what we have contended is the corner post that shows the intersection of the Forrest with the lower side line of the Lotta?

A. Do you contend it is a corner post?

Q. I want to know what you contend it is.

A. I don't contend that it is anything but a post put into the ground; that is all I know about it.

By the COURT.—You are talking about the stake,

(Testimony of R. A. Kinzie.)

the one your people testified was at the point of intersection between the Forrest end line and the Lotta side line?

Judge WINN.—Yes, the intersection of the Forrest with the Lotta.

Q. I will ask you if you did not testify in 803—A as follows, when Mr. Burton was cross-examining you about this matter:

Q. Have you driven along the lines, exterior boundary lines of the Lotta lode? That word “driven” is a mistake—it should have been run.

A. I have run our own claim over and I have been over some of the other ones but very few.

Q. Have you ever noticed any of the stakes on the Lotta? A. On the Lotta?

Q. Yes. [819] A. No, I have not.

Q. You have not noticed any stakes?

A. I know of one stake along the side of the road; it was knocked out when we were moving some machinery about five years ago.

Q. It was knocked out when you were moving some machinery? A. Yes, sir.

Q. It was a Lotta stake?

A. Yes, I think it was—

You testified to that, did you, on the preliminary hearing?

A. I think I did. I remember part of it—part of it I am absolutely sure about.

Q. That you did testify to?

A. Yes. I am not sure that I testified it was a Lotta stake, though. I very likely did, though.

(Testimony of R. A. Kinzie.)

Q. As much as five years ago, then, you knew at least of one of the stakes there that was claimed as being one of the Lotta stakes?

A. No; I don't think at that time I knew it was claimed as a Lotta stake.

Q. Do you want to say that your testimony I have just read over to you is not true, that portion of it?

A. No.

Q. Didn't you say this was about five years ago you went along there and knocked that stake out and you were questioned and asked if you did not know it was a Lotta stake and you said you did?

A. Did I say it was a Lotta stake at that time?

Q. Did you know that it was a Lotta stake at that time?

A. No, I did not and don't know it yet. [820]

Q. I will ask you if this question was not asked you:

Q. Have you noticed any stakes on the Lotta lode?

A. On the Lotta?

Q. Yes. A. No, I have not.

Do you remember testifying to that in that application? A. I very likely did; yes.

Q. You have not noticed any stakes?

A. I know of one stake along the side of the road; it was knocked out when we were moving some machinery about five years ago.

Did you testify to that? A. I did.

Q. It was knocked out when you were moving some machinery? A. Yes, sir.

(Testimony of R. A. Kinzie.)

You testified to that?

A. I did.

Q. It was a Lotta stake?

A. Yes, I think it was.

You answered that way, did you not? A. I did.

Q. A corner stake?

A. I am not sure about that.

You answered that way? A. I did.

Q. Now, you want the Court to understand that you did not five years ago know that that was a Lotta stake—is that what you want the Court to understand?

By the COURT.—He has already said he did not know it was a Lotta stake.

Q. When did you ascertain that was a Lotta stake?

A. I never have known it was a Lotta stake and don't know yet.

Q. Although you testified substantially as I have read over to you on one of the preliminary hearings for an injunction in this case?

A. I did testify; yes. [821]

Q. Now, you stated that you were over this Parish lode claim and Parish #2 quite considerable at the time that this adjustment was made between the Ebner Gold Mining Company and your company over the conflict that existed between the Colorado survey and the Parish No. 1 lode, and I believe you said yesterday also that you knew at that time that Ebner was claiming the two Parish claims—when you were going over that ground for the purpose of set-

(Testimony of R. A. Kinzie.)

fling this matter, did you find any stakes of either the Lotta or Parish #2? A. I did not.

Q. You didn't look for any? A. No, I did not.

Q. You did look for the stakes of the Parish #1, did you not? A. I did not.

Q. You testified yesterday you had considerable dealings with Mr. Ebner concerning this adjustment and was at that time the assistant superintendent of the defendant company, were you not?

A. I didn't have considerable dealings with him at all. He came to me and said we were on the Parish claim. I knew nothing of the Parish claim at the time, never heard of it and I asked him what he wanted—I knew he must want something or he wouldn't come—and he said, "We have a claim across there and you are going upon it and if you go to patent we will adverse you," and I said, "We didn't want any adverse."

Q. What did he want?

A. He said he wanted the ground and I said, "We want the tunnel site; we want to drive a tunnel site there and if you will deed us the tunnel right there, it is all right with us, [822] that is all we want—a tunnel right there through that claim," and it was done.

Q. You did state yesterday before that was done you went over there and went over the ground?

A. I was on the ground.

Q. You don't want it understood you went over the ground?

A. Over the ground in conflict? No, sir, I did not

(Testimony of R. A. Kinzie.)

—that is up on the hillside.

Q. And you didn't discover any markings or monuments at all on the ground that would indicate to you that the Ebner Gold Mining Company had either the Parish #2 or the Parish #1 at that time?

A. I did not.

Q. You at that time were the assistant superintendent of the defendant company?

A. I have forgotten whether I was assistant superintendent or general superintendent at that time.

Q. Either one or the other?

A. Either one or the other; yes.

Q. Did they leave it up to you to adjust this matter with the Ebner Gold Mining Company or leave it up to Joseph McDonald?

A. No; I think that was done through me, that is, the preliminary work. Of course, it had to go down for the signature of the officers of the company—I had no authority to make any promise or deed any property belonging to the company away.

Q. But it had to be put through by the consent of the superintendent—your company would have never put it through if he had not consented to it?

A. Oh, yes.

Q. When this application for patent was pending, your company [823] agreed to convey to the Jualpa Company a portion of the Idaho placer and the Colorado lode, which covered the creek-bed of Gold Creek, did it not?

Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

(Testimony of R. A. Kinzie.)

Objection overruled. Defendant allowed an exception.

A. There was some talk about it but it has never been deeded.

Q. You know there has been a contract entered into between the Jualpa Company and this defendant company to deed over that portion of it.

Same objection. Objection overruled. Defendant excepts.

A. I don't know there has been a contract; no.

Q. You are acquainted with Mr. F. W. Bradley's signature, the consulting engineer of your companies over there, and also the president of the Alaska-Juneau Company? A. Yes, sir.

Q. You know the seal of your company, the Alaska-Juneau Company? A. Yes, sir.

Q. I will ask you to look at that paper writing and state whether or not that is the signature of Mr. Bradley, signed as president of the company, the defendant company.

A. That is Mr. Bradley's signature.

Judge WINN.—Now, I offer in evidence this contract for the conveyance of certain portions of, I think, the Colorado and Idaho placer, which is indicated on this map, Plaintiff Exhibit "N" and is described by metes and bounds in the agreement—I desire to have it copied into the record.

By the COURT.—This would all be below any point of diversion of water that was ever contemplated or claimed to have been contemplated by this witness, would it not?

(Testimony of R. A. Kinzie.)

Judge WINN.—It is below the point where they are taking it out [824] now; yes.

By the COURT.—It is below the tunnel site—the Snowslide Gulch tunnel site?

Judge WINN.—It is right in that neighborhood.

Mr. SHACKLEFORD.—We object to the offer for the reason that it is incompetent, irrelevant and immaterial, not proper cross-examination and not within the scope of any of the pleadings in the case, and for the further reason that it appears upon the face of the contract that it is a contract between the defendant in this case and another company that is not a party to this case, and concerns a matter entirely collateral to any of the issues in the case.

Objection sustained and plaintiff allowed an exception.

Judge WINN.—We offer to prove by the introduction of this paper which the Court has just ruled out that on the 15th day of June, 1905, there was an agreement entered into between the Alaska-Juneau Gold Mining Company, the defendant in this case, and the Jualpa Company, a corporation, under and by virtue of the terms of which the defendant company agreed to convey to the Jualpa Company certain portions of the Colorado and Idaho placer claims that were in conflict with a mining claim that was claimed by the Jualpa Company at that time and which portions agreed to be conveyed are indicated on Plaintiff's Exhib. "N," and has the initials on, A. J. Co. to Jualpa Co. by deed, and is two almost triangular pieces that is heavily dotted in with ink

(Testimony of R. A. Kinzie.)

and has one of the end lines marked 5 on the Idaho placer claim and another marked 3 as two of the corner posts—one of the side lines of the portion agreed to be conveyed—and we offer that for the purpose of showing, among other things, [825] that this company never until recently contemplated using any water of Gold Creek, and it was only undertaken in connection with a plan that was commenced in 1910 while the Bent people were on the ground here.

Mr. HELLENTHAL.—I want the record also to show that the contract offered in evidence shows upon its face that it is a compromise agreement with reference to the matters and things therein set out.

Judge WINN.—It might show that there was a conflict between the Idaho placer and probably the Colorado with a claim claimed by the Jualpa Company, and there was either a suit brought or a threatened suit or an adverse filed and this was deeded over to us or agreed to be deeded and we let the Alaska-Juneau go to patent.

By the COURT.—It being conceded it was an adjustment and settlement of those conflicting claims, the offer will be rejected and exception allowed.

Q. From what part of the ground, commencing with the Colorado lode mining claim and coming down Gold Creek from this proposed flume and tram, which is a part of the system that you have testified concerning, which is referred to as the Gold Creek method of opening up this property and extending on down along Gastineau Channel as far as

(Testimony of R. A. Kinzie.)

you claim that your property runs, along the words, "Proposed 200-stamp mill," I will ask you to state to the Court over just what portions of that part I have described in the year 1910 there were locations made of mining claims by the defendant company.

A. There is a line of claims known as the Bear claims located from our Idaho claim to our Utah and Summit claims. [826]

Q. And the Utah and Summit claims are down here on some of this ground that you have the words written, "Proposed 200-stamp mill"?

A. The Utah claim is.

Q. Where is the Summit located?

A. The Summit adjoins the Utah.

Q. (By the COURT.) On the north?

A. On the north.

Q. When was the Summit located?

A. That is a patented claim.

Q. I am after those that were located in 1910?

A. I said they joined that.

Q. Do those claims of yours conflict with any other claims on that ground except the Shattuck and Rock and the Caro & Kohn claims, to your knowledge?

A. You mean the ground claimed by us?

Q. Yes. A. No.

Q. You don't know of any other conflict there except those? A. I know of no other.

Q. What was the first thing that was done on Gold Creek in the year 1910 in reference to making any of those locations that were made of water or of mining

(Testimony of R. A. Kinzie.)

claims, was the Mulligan location of water the first one?

A. No, I think not. I think those Bear claims were located first.

Q. I mean up on Gold Creek proper, back in the neighborhood of the Oregon—what you claim to be the Oregon?

A. The claims that have appeared in this case you mean? A. Yes.

A. Why, I think the Oregon was the first location made on Gold Creek. [827]

Q. Do you remember whether that was located before Mulligan put that first location notice up of water? A. It was.

Q. Does the Oregon location under Corbus and the one that was made in 1910 under Datson cover the same ground? A. Not identically; no.

Q. Now, in this answer in 835-A—I believe you verified that answer in this case we are trying now?

A. Yes, sir.

Q. Now, the description set out in there, in your answer, I will ask you to look at it and state whether that is the description of the Corbus Oregon claim or the Datson Oregon claim.

A. I can't say offhand.

Q. You don't know which one that describes?

A. No, I do not.

Q. If your answer is true—the answer sets out a description of those two Oregon claims as being the same, does it not? A. I don't know I am sure.

Q. You verified the answer? A. I did.

(Testimony of R. A. Kinzie.)

Q. Do you know when you verified the answer whether or not you were giving the same description of those claims?

A. I think that answer was checked over in the draughting office—I very seldom checked over the courses and distances—I sent it to the draughting office and they checked it over. I have no reason of knowing from reading it over what it is.

Q. Which one of these locations are you claiming the Oregon claim under, the Corbus location or under the Datson location.

[Clerk's Note: Owing to defective carbon copy, the last line on this page is illegible.]

[828]

Objection sustained. Plaintiff allowed an exception.

Q. Now, in this answer that I exhibited to you yesterday in 803-A, which has this map attached to it which you have been testifying concerning this morning, and when we were making an application for a temporary restraining order, you never claimed any title to the ground embraced in what you say is the exterior boundaries of the Oregon claim except the title you were claiming by virtue of the old Wyoming claim and the old Oregon claim?

A. I don't remember about that.

Q. In verifying these pleadings and in swearing to the truth of them you generally read them over carefully and compare these courses and distances or did you just sign them promiscuously?

A. No, I read them over and have the courses and distances checked.

(Testimony of R. A. Kinzie.)

Q. The first man you sent upon this property *that in dispute* and I have reference to the Parish lode claims, in 1910, was a man by the name of O. M. Harry, was it? A. No.

Q. What time did you send Harry up there?

A. Harry was sent up August first, if my recollection is correct.

Q. Would you be positive of that date?

A. Yes, I am quite positive of that date.

Q. What do you have to refresh your memory on that date?

A. I have looked that up and I have talked to Harry.

Q. The most you know about it is from what Harry has told you? A. No.

Q. Partly from what Harry told you?

A. A good deal from what was going on there, yes.

[829]

Q. Harry was the man you sent up there to build a cabin and to watch?

A. No, he didn't build the cabin.

Q. He went up when the lumber went up for the cabin?

A. No, he was up there before the lumber went up.

Q. He was there when the lumber went up?

A. Yes, sir.

Q. He helped get the lumber up?

A. No, I don't think he helped—we had some men there to build it.

Q. Was Harry on the ground? A. Yes, sir.

Q. What was he doing?

A. He was doing the work he was sent up there

(Testimony of R. A. Kinzie.)

to do; he was up there repairing that grade.

Q. Did he commence any work on the grade before you built the cabin? A. Yes, sir.

Q. Are you sure of that? A. Quite sure.

Q. Where did Harry stay then?

A. I think the first few days he stayed in town—the evening.

Q. The first man you sent up there in 1910 to do any work was Harry? A. Do any work?

Q. Yes—outside, of course, of the locations.

A. You mean on the ground in dispute?

Q. Yes, on the ground in dispute.

A. Yes. There was a good deal of work down around in that immediate vicinity. [830]

Q. The first work that was done up there on any of the disputed ground was done by Harry in 1910?

A. Right on Gold Creek; yes.

Q. Some of these things are not right on Gold Creek?

A. You know what I mean—in that immediate vicinity—say a line drawn from the Ebner compressor over to Snowslide Gulch; we had men working just above that.

Q. You were working on your own ground, not on disputed ground, before that?

A. I don't know whether it is disputed ground or not—I don't think it is.

Q. You say the ground along where you built your flume ultimately seemed precipitous and you first had to have trails, etc., built before you could get in over the ground or get lumber in there to build your

(Testimony of R. A. Kinzie.)

flume? A. Yes, there were two trails built.

Q. One of them you undertook as a trail which contemplated taking the water out of Gold Creek about 150 feet above your present dam?

A. No—the two trails that were built were leading from the cabin, one up the grade and one around the cliff over the top; that came around by the side of our present dam.

Q. *The* said the country was very rugged and precipitous there?

A. You couldn't get along the cliff, no. You had to go over the top of it.

Q. This man Harry was doing that work—building the two trails you have just mentioned?

A. He did build the two trails; yes, sir.

Q. Did he have any assistance in building the two trails? A. No, I think it took about a day. [831]

Q. Harry is a wooden-legged man?

A. He has one leg cut off.

Q. Has an artificial limb? A. Yes, sir.

Q. Do you know whether his artificial limb extends from below or above the knee, down?

A. I don't know.

Q. You know this man Harry, have seen him walk and know he gets around with a great deal of difficulty with that artificial limb and part of the time walks with a cane?

A. He gets around very well indeed for a lame man.

Q. But you know that he walks the same as all other men with artificial limbs, and part of the time has a cane?

(Testimony of R. A. Kinzie.)

A. He walks with a limp, yes—I never have seen him with a cane.

Q. Harry was the only man you had up there for quite a little while?

A. No, I didn't testify to that.

Q. Did you not say that you didn't have but one man up there for awhile—that was all that was necessary—didn't you testify to that yesterday?

A. You mean working on this particular grade?

Q. I mean the men up there in the canyon working on this particular grade. There was a considerable time that you didn't have any man except Harry? A. Yes.

Q. And he was living in the cabin? A. Yes, sir.

Q. And part of the time down town?

A. Yes, sir.

Q. That cabin is not built on the Parish No. 2 or No. 1 as we claim it? [832] A. No, sir.

Q. It is about how far below the lower side lines of either one of these claims?

A. I should say about 60 feet; perhaps 80 feet.

Q. And you know before you reach the Parish lode claim you have about 400 feet of flume to build, don't you?

A. No; all the flume is on the Parish claim until we get around from the tunnel to the intake; it is entirely on what is claimed to be the Parish claim.

Q. Look on this exhibit "N" at the part of the flume that is built before you reach the Parish lode claim and state whether or not if that map "N" is correct, if you haven't got about three or four hun-

(Testimony of R. A. Kinzie.)

dred feet on other ground than the Parish No. 2?

A. The temporary flume from our tunnel around?

Q. Yes; that is what I mean.

A. That is not on the Parish, not from our tunnel around to the Colorado claim, the intake of the pipeline.

Q. According to this map, taking the boundaries as being correct, about how much of your flume has been built before you reach the Parish #2?

A. It started on the Parish, on what you claim to be the Parish, or just above it—taking your map there—I think our intake shows just below the side line of the Lotta.

Q. Here is all this portion of the flume commencing at your penstock and extending around for a distance which Wettrick testified was about 400 feet before it reaches the lower side line of the Parish #2—if that map is correct, then there is quite a bit of your flume that is not on the Parish #2 lode claim? [833]

A. As it stands—this temporary flume from the tunnel around to the penstock we intend to build through that tunnel—the tunnel is not completed.

Q. I will ask you if this man Harry has not been in your service for quite a number of years?

A. Three—two or three years.

Q. When you had some contemplated lawsuits down at Sheep Creek you put him down there as watchman and guardsman, didn't you?

A. I don't know of any contemplated lawsuits we had there.

(Testimony of R. A. Kinzie.)

Q. You had him down there for quite awhile as watchman or something, working for your company?

A. He is an excellent man for work of this sort. He understands the measurement of water, he understands flume building.

Q. You had him down there?

A. He was at Sheep Creek.

Q. And when you had some dispute over here on the Island between John Johnson and the Treadwell Company you put him in a tent down there as watchman and let him have a rifle? A. We did not.

Q. He was put down there in a cabin to watch and keep the Johnsons off the property which Johnson claimed to be his? A. He was not.

Q. He was arrested for firing a rifle and charged with an assault with a deadly weapon and indicted by this Court for attempting to run the Johnson people off of there?

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial and not proper cross-examination and not the best evidence—especially as he was acquitted.

Judge WINN.—You admit that he was indicted, tried and acquitted for assault with a deadly weapon on these Johnson people. [834]

Mr. HELLENTHAL.—I admit nothing.

Q. You know as a matter of fact that he was arrested for firing a rifle and he claimed he fired over the head of those people and some of them came over here and had him arrested.

(Testimony of R. A. Kinzie.)

Objected to. Sustained. Plaintiff allowed an exception.

Q. You know the general reputation that that man O. M. Harry has in this community, and has had ever since he has been in your service, is that he is a gunman?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant excepts.

A. No, I didn't know that was his reputation. It is certainly not his reputation with me.

Q. Do you know how many times he has been arrested since he has been in your service?

A. Once, I think.

Q. He is the same man that when your company went further up Gold Creek in 1910 and pitched a tent across the right of way that we had cleared out—he occupied that tent and pitched it across there?

A. He was up on the claim we claimed as our Russell claim, yes.

Q. And you know that that tent was pitched right across a grade that the plaintiff company in this case had cleared away, don't you?

A. The tent was put up there, yes.

Q. You saw the tent up there several times?

A. I did; I was up there several times.

Q. I hand you a photograph which we will have marked for identification Plaintiff's Exhibit "DD" (it is so marked), and ask you if that is not a good photograph of the tent up there and a portion of the flume-line of the plaintiff company? [835]

(Testimony of R. A. Kinzie.)

Objected to. Sustained.

Q. After this cabin that Harry occupied down near Snowslide Gulch was built—not considering the men who assisted in building that cabin, but what other men besides Harry did you have working up there along about the first of August, if any?

A. There were no other men.

Q. When did you put on any other men up there to assist Harry? A. I think it was September tenth.

Q. Do you know how many men you put on there?

A. It was either two or three men—it was a contract started at the time.

Q. Two or three men on September tenth?

A. Yes.

Q. Who were they?

A. Hendrickson was one—the contract was let to Hendrickson.

Q. What was that contract?

A. Driving a tunnel.

Q. That was to drive a tunnel across that little piece of ground that runs under Snowslide Gulch?

A. Yes; he had the contract to drive that tunnel.

Q. He had the contract to drive that tunnel. Now, where did you commence that tunnel—on what claim do you claim you commenced it?

A. I understand it is on the Parish.

Q. And it is on what you claim to be—what claim, belonging to you? A. The Oregon.

Q. How many men did he have assisting him, do you know?

A. Yes, I think he started out with one or two—I

(Testimony of R. A. Kinzie.)

didn't pay [836] much attention to the men he had, but the crew was afterwards increased and the contract was turned over and Harry taken and put in charge.

Q. You don't know how long he worked with one or two men, do you? A. No, I can't say I do.

Q. When did you next increase your force of men?

A. Why, it was just a few days after that.

Q. Do you know who many more you put on then?

A. There were two or three men—I think the first day there were two and the next day there was one put on, the crew was changing back and forth.

Q. What time was that, in September?

A. That was around—I think this first man went up somewhere around September 12th.

Q. From September 12th on for some days, how many men did you have working up there?

A. Altogether I should say 6 or 7 men. Some were with Hendrickson and some were not.

Q. Working for what length of time?

A. The crew was afterwards increased after that, gradually increased—we put men all along the line then.

Q. How many men did you have working for you?

A. We had a crew there, counting natives and all, of about 50 or 60 men.

Q. Fifty or sixty men working on the flume?

A. On the flume grade and pipe-line.

Q. When did you first have that number of men there?

A. I don't know. There was quite a crew of men

(Testimony of R. A. Kinzie.)

there when I was in Ketchikan and when I came back, on that work. I remember one day definitely, that is, that I can verify, the day Judge Lyons was up there. [837]

Q. That is the time you went down to Ketchikan for the trial of Mackey and those men who had previously been arrested or indicted? A. Yes, sir.

Q. All of that work was first commenced down near Snowslide Gulch at a point on exhibit "N" near your penstock, near what we term the Penstock?

A. No, it was not.

Q. Where did you commence your first work?

A. It started on the slope of Gold Creek at the point marked Alaska-Juneau Company tunnel (referring to Exhibit "N")—no, that is a house—the tunnel is not shown here.

Q. You say a house, marked as your cabin?

A. Yes, sir.

Q. On exhibit "N," near the words Taku Queen lode claim—where the little cabin is. I will ask you with respect to that little cabin where did you commence your first work?

A. We started northeast from there, at the point where our tunnels are located.

Q. How far is your tunnel from the cabin?

A. I should say 225 or 250 feet.

Q. Up the creek or down the creek?

A. Up the creek; it is diagonally above the house; here is the house here and according to this scale it would be about 225 or 230 feet.

Q. Outside of this work that Harry did the first

(Testimony of R. A. Kinzie.)

work you virtually commenced doing was running that little tunnel you have spoken of? A. Yes, sir.

Q. Now, you commenced building your flume-line also from that [838] end down near Snowslide Gulch? A. No.

Q. You didn't build the first of your flume there?

A. No, the first flume was built on the grade just below our dam,—the intake right at our dam.

Q. You did commence clearing away what you claimed to be your right of way from your penstock and the cabin and commenced running that tunnel down at that end and then you did quite a little bit of work, didn't you, along your intended line of flume up Gold Creek, but you did no work up there at the place where your dam is now?

A. We did no work whatever around the penstock. We did not anticipate any interference at all. We started with our tunnel and intended to put our tunnel through; we first drove our tunnel, started the grade through there and in the meantime we had the place where our present dam is cleared out, our present diversion made and some boxes put in to sluice off the rock just above that point.

Q. I will ask you before the third or fourth of October, 1910, what amount of work had you done down near Snowslide Gulch and from your penstock on up towards Gold Creek, leaving out the question of any work that you had done or pretended you had done up around where your flume is now—where your dam is now, I mean?

A. We had done no work in Snowslide Gulch

(Testimony of R. A. Kinzie.)

whatever. The first work was at the tunnel, according to that exhibit about 230 or 235 feet from our cabin—the grade was continued in a northwesterly direction along Gold Creek.

Q. From the point you have just indicated—was continued along? A. It had been constructed.

Q. But it continued along up the creek from where you located [839] your tunnel?

A. No; the men were spotted along the grade and they worked in each direction from there—the men were working in the grade toward each other. The grade had been continued to the face of the cliff and part of that rock work started to get around the cliff on the other *wise*, that is, the present site of our dam. And just above it, above it,—I think for a distance of 150 or 155 or more feet, the bench of rock on the east side had been cleared off of gravel and boulders; that is on October 3d. The place where our present intake is had been cleared out with the exception of one boulder that blocked up the entrance—that was practically all the work—and the two tunnels driven; that was practically all the work that was done; and the lumber and logs had been delivered for the dam and the ground cleared just below the Jualpa flume, for that end of the dam—that is all the work up to October third.

Q. Now, prior to the 4th day of October, 1910, you had not constructed any of your flume-line at all, and when I say flume, I mean flume from your penstock up the creek, on your grade—had not put any of it in prior to October 4th?

(Testimony of R. A. Kinzie.)

A. We had put in one piece of flume as the intake, where we had made the diversion from Gold Creek at the dam—that was the only piece of flume put in.

Q. I say prior to October 4th then, as I understand it, you had not put in any flume at the commencement, at your penstock, what was afterwards made your penstock, extending on up Gold Creek?

A. Starting from that end?

Q. Yes. A. No.

Q. You hadn't put in any flume there at all?
[840]

Q. Did you have any grade from the penstock say on up about halfway, up the creek—did you have a grade ready for the flume on October 4th?

A. There was no grade constructed in a south-westerly direction from our tunnel, around that point.

Q. Then, as I understand now, from where your penstock is now, on up the creek for a considerable distance, on the 4th of October, you did not have your grade line ready to put down your flume?

A. No, you don't understand it at all—you didn't ask me that; going northeasterly from our tunnel the grade was practically completed.

Q. I mean up the creek, commencing at your penstock and going up the creek, over the line you eventually put the flume in had you prior to the 4th day of October any of that grade ready to put your flume down?

A. I can't answer that—the penstock is not on Gold Creek. You have to go down Snowslide Gulch

(Testimony of R. A. Kinzie.)

to the creek to get to the penstock.

Q. In and about where you put this little piece of tunnel that you said you started in there to carry your flume-line through Snowslide Gulch, right in that vicinity and on up the creek—did you have any grade ready for putting down your flume on October 4th?

A. Did I say I put a flume in Snowslide Gulch? I am trying to answer your questions as you ask them.

Q. From the point where you say you were going to put a tunnel through, to put your flume-line through that tunnel, on up Gold Creek, prior to the 4th day of October, did you have any portion of your flume line grade ready for putting down your flume? [841]

A. We had.

Q. Commencing from that point and going on up from your tunnel, how far up the creek did you have any part of your grade ready to put down your flume?

A. Why, I could tell you better from my photograph introduced here. I should say offhand—

Q. I mean approximately.

A. There were three places on the grade that were down to grade. The first place was right at the tunnel, I should say a distance there of between 70 and 80 feet, perhaps, and there was another place that had been cleared off, with the exception of some points of rock that came down. I should say that was 30 or 40 feet, perhaps, and from there on up to the cliff.

(Testimony of R. A. Kinzie.)

Q. About how far up the cliff from there?

A. From there I should say 100 feet or more,—a little more. The grade wasn't completed.

Q. I am taking this little tunnel that you spoke of, that you expected to put your flume through as an objective point—now from that point, going up the creek, and I mean in an unbroken line from that point up the creek and taking that as an objective point and coming down towards your penstock and taking that as a continuous line, how much of that grade did you have ready to put down your flume upon, on the third day of October, 1910?

A. I should say there was approximately one-third of the distance ready for the flume—going north from the tunnel, going around the point where the temporary flume has since been laid there was no grade laid.

Q. And how was the grade between the tunnel and where your [842] penstock is now?

A. I just said there was no grade there.

Q. I will ask you if this photograph that I present to you (marked Plaintiff's Exhibit "EE" for identification) is a fairly good photograph of a portion of your flume line extending from Snowslide Gulch on up Gold Creek for a distance and also showing on the right-hand side of Snowslide Gulch some buildings of yours—you notice the date at the bottom when that photograph was taken in regard to your answer—and ask you if that is a fair photograph.

A. Yes, I think it is. I notice it was taken the

(Testimony of R. A. Kinzie.)

20th of last month.

Q. What part of the grade over which that flume line is indicated on the photograph did you have ready to place your flume upon, prior to October third? A. None of it.

Q. You didn't have any part of that ready at all? A. No.

Q. Where is your tunnel with respect to the flume-line on them?

A. Directly over that point—over the point shown on the left-hand side of the picture, immediately above the flume-line—that is one portal—that is the north portal.

Q. That is the tunnel you commenced to run to put your flume-line through to carry your water in and along Snowslide Gulch? A. Yes, sir.

Judge WINN.—We offer the photograph in evidence as part of this cross-examination. It is admitted as "EE."

Q. Then, as I understand it, the grade that you had ready on the third day of October, a part of it was from the tunnel as [843] indicated on this photograph on up Gold Creek?

A. The tunnel does not show on that photograph.

Q. It is near the end of the picture?

A. It would not show on the picture.

Q. But it would not be very far from the end of the flume?

A. No, not very far; just on the other side of the ridge.

Q. Then from that point on up, on the third of

(Testimony of R. A. Kinzie.)

October, you had about how many feet ready for your flume? I mean along in a continuous line—I don't mean at different places.

A. From the penstock to the tunnel there was no flume grade constructed.

Q. I say from your tunnel up the creek.

A. I should say about one-third of the distance the grading was done.

Q. Ready for the flume?

A. Yes, ready for the flume; that is one-third of the work—the grade, of course, has been continued to the face of the cliff.

Q. I hand you another photograph marked Plaintiff's Exhibit "FF" and will ask you if that is a fair picture of your buildings that you have near Snowslide Gulch and another short portion of your flume-line, showing the relative location of them with regard to this gulch.

A. The photograph shows the flume-line as finally constructed on the north side, northwest side of Snowslide Gulch, the buildings at the portal of the tunnel being driven along under Snowslide Gulch and the grade on the northeasterly—I mean southeasterly—side of Snowslide Gulch and along the bank of Gold Creek.

Plaintiff's exhibit "FF" is admitted.

Q. I will hand you another photograph which shows part of a [844] flume-line and probably a water-wheel and some running water—it is marked "GG" for identification—and will ask you if that is a fair photograph of your flume, of the part of your

(Testimony of R. A. Kinzie.)

flume in and near Snowslide Gulch, before the snow had fallen and also if you identify that wheel there with any of your construction work.

A. I do.

Q. What is it?

A. That is a photograph taken between the 14th and 17th of November some time. The wheel shown in the foreground is the water-wheel of the compressor that was being installed.

Q. And where is your penstock with respect to any object on that photograph?

A. The penstock is not shown on there.

Q. Is there any point there that you could locate your penstock with respect to—how about where the water is flowing out of that flume?

A. The penstock is situated just back of that.

Q. And you pipe the water from that penstock down to your compressor-house and wheel?

A. We do.

It is admitted as Plaintiff's Exhibit "GG."

Q. I will hand you another photograph marked Plaintiff's Exhibit "HH" and ask you if that represents some part of your works up there and what part.

A. That shows the flume-line from the intake at the dam of the Alaska-Juneau Company along the bank of Gold Creek to the portal of the tunnel through the point.

The photograph "HH" is admitted in evidence.

Judge WINN.—The answer in 803-A has been admitted in evidence and I now offer the blue-print

(Testimony of R. A. Kinzie.)

attached to the answer. [845]

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

The blue-print is admitted as "II."

Afternoon Session.

Continuation of the cross-examination of Mr. KINZIE:

(By Judge WINN.)

Q. Up to the evening of the second of October, 1910, what had you done in and about where your dam was finally constructed?

A. Part of the lumber and the poles had been pulled down the hill to a point just above the Jualpa high line flume and previous to that time the piece of ground to the west end of the Alaska-Juneau dam where the flume was afterwards put in had been partially cleared off.

Q. Now, is that the condition you found this place in on the morning of the third of October, 1910, when you went up there? A. Yes.

Q. Where were your poles? Had they been taken down from the roadside, down toward the creek?

A. They had.

Q. When you got there on the third?

A. Yes, sir.

Q. Do you know when they had been pulled down, from your own personal knowledge?

A. No, I don't remember seeing them pulled down.

(Testimony of R. A. Kinzie.)

They were pulled down some time previous,—I don't know when.

Q. On the morning of the third when you got your lumber—when you got up there, where was your lumber—did you have some lumber up there? [846]

A. I think if there was any lumber it was either right alongside the road or had been pulled down the hill. I have forgotten which.

Q. I want to know what your recollection is on that, if you have any definite recollection on it.

A. My recollection would be that the lumber was piled just above—alongside the Basin road just above where the Perseverance tower is.

Q. Do you know when it was taken up there, of your own knowledge?

A. No, I did not see it. I know when part of it was sent over.

Q. On the morning of the third did you have a piece of flume already built and put in there where you expected to build your dam?

A. It was built on the morning of the third.

Q. How long a piece of flume did you build on the morning of the third?

A. That intake box was something like 12 or 15 feet long.

Q. You built it on the ground that morning?

A. Yes; the lumber had been taken down to the high line flume—the lumber set in the high line flume; the box constructed and taken along the side line to its position on the east side of Gold Creek.

Q. That was all done on the third?

(Testimony of R. A. Kinzie.)

A. On the third—the lumber must have been there.

Q. How far down was it from your dam, down the present grade of the flume that you had any grade ready to lay your flume on the morning of the third?

A. Well, the first spot that was grade was entirely finished I should say would be perhaps 300 feet, maybe a little less. [847]

Q. I understand you had Harry up there from some time about the first of August up to some other specific date, before you put anybody there to assist him. Now, leaving out the question of those men who assisted him in building the house or built the house or assisted Harry in getting the lumber to where the house was built—leaving those men out of the question, I wish you would fix the date specifically when it was you sent another man up there to help Harry.

A. I was on the ground with Hendrickson on September tenth.

Q. Hendrickson was the man that took the contract to build the tunnel you expected to put through there at Snowslide Gulch, to put your flume through?

A. Yes, the contract was afterwards signed up.

Q. Then you were up there on the 10th—that was the first work you had done outside of what Harry done? A. Yes, sir—that is, on the flume.

Q. He didn't do the work on the flume? I don't want to confine it to that.

A. On the flume or grade—that was the first time we put any additional men to work on the flume or grade.

(Testimony of R. A. Kinzie.)

Q. Outside of the service Harry performed?

A. Outside of the service Harry performed.

Q. On the 25th day of August, 1910, can you state specifically what had been done by Harry—do you know the condition of affairs up there on the 25th of August, 1910—up to about the 25th? I want to know what Harry had done up there.

A. Harry had moved up at that time and was living in the cabin which had been previously constructed. He had built a trail from the house, cutting steps in the side of the bank up to the grade line; he had also constructed a trail over the [848] hogback and over the cliff beyond to Gold Creek at a point where our dam was afterwards established; he had gone up the canyon of Gold Creek and had turned some water out of the creek, to be used for sluicing off the gravel on the east side of Gold Creek—had cleared off some of that gravel at one point for a distance, I should say, of 125 feet—we will say 100 feet—above the present intake of our flume.

Q. He had done considerable work for a lame man from the first of August up to the 25th?

A. He had done a reasonable amount of work; yes.

Q. You remember the 25th of August was the date we filed our papers and commenced the first injunction proceedings against your company?

A. No, I don't remember it; it was somewhere in there.

Judge WINN.—We desire at this time to call the Court's attention to the filing of the complaint in the injunction suit in 803 on that date.

(Testimony of R. A. Kinzie.)

Mr. SHACKLEFORD.—We have no objection.

By the COURT.—It will be so considered.

Q. About how many times had you been up on these premises up to the morning of the third of October, 1910, that is, I mean after you first sent Harry up there—between the first of August and the third of October?

A. I suppose a dozen times—perhaps more, perhaps less.

Q. You had spent quite a little bit of your time up there, had you?

A. No, I had not. I would usually go up in the afternoon and catch the half-past four boat back.

Q. How often were you up there between the first of August and the 25th of August? [849]

A. Three or four times.

Q. You know that this cabin that was built up there in which Harry lived is on what we claim to be the Cape Horn lode claim, don't you?

A. I believe I have heard you so state; yes.

Mr. HELLENTHAL.—I move that be stricken—it has no relation to this case—that is the claim that has been dismissed.

Motion denied. Defendant allowed an exception.

Q. Do you know Mr. Burch? A. I do.

Q. Do you know what date in August or September or October Mr. Burch arrived here?

A. It was either September 25th or 26th—somewhere about there.

Q. Do you remember whether or not he was here when the application was made for the first injunc-

(Testimony of R. A. Kinzie.)

tion? A. I don't remember that he was.

Q. You don't remember whether he was or not?

A. Yes, I don't think he was here. I am pretty sure he was not here.

Q. Mr. Burch was sent up here by Mr. Bradley, was he not?

A. He was sent by Mr. Bradley for the allied companies—all of the interests in here.

Q. You heard Mr. Burch testify in court here at least on two occasions, on the trial of the criminal cases and also on some other cases, that he was sent up here especially by Mr. Bradley?

Objected to as hearsay. Objection sustained. Plaintiff allowed an exception.

Q. You said he was sent up here to represent the whole allied interests—you mean the interests of the Alaska-Juneau Company, [850] too, don't you?

A. Why, he was not sent up in connection with this case in any way whatever.

Q. Answer the question. You meant to represent the interests of the Alaska-Juneau Company?

A. All the interests that Mr. Bradley is representing in here—he came from Mr. Bradley's office.

Q. Why don't you answer the question whether he was sent here to represent the interests of the Alaska-Juneau Company—you can answer that?

A. Yes, sir, I can. You don't ask the question correctly.

Q. I ask you if the Alaska-Juneau Gold Mining Company belongs to the allied interests—do you understand that? A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. Did Mr. Burch come up here, among other things, to represent the interests of the Alaska-Juneau Gold Mining Company—to represent the Alaska-Juneau Company?

A. To represent the Alaska-Juneau Company he did come up, but it is not one of the allied interests.

Q. You know, as a matter of fact, that Mr. Burch is an expert who has been in the employ of Mr. Bradley for a good long time and is a man that is generally sent around where there are lawsuits to conduct, to look after the interests of the companies?

A. He is not in the employ of Mr. Bradley, to start with. He has had a great deal to do with lawsuits and it was to prevent lawsuits that he was sent up here—to look into the legal status and rights of the different companies.

Q. You got into them pretty fast after he came up here?

A. No, we didn't get into them—we were pushed in. [851]

Q. How long had Burch been here before you went up there on the third and got into this skirmish and you came down here and swore out complaints against Mackey and others?

A. But a very short time.

Q. You are the same Kinzie that swore out the warrants against Mackey and others, are you?

A. I am.

Q. You swore to the complaint? A. I did.

Q. Now, your company has commenced how many suits over this same property—do you know how

(Testimony of R. A. Kinzie.)

many suits are pending here in court?

A. No, I do not.

Q. You know your company commenced suit to clear title to what you call the Canyon lode claim?

A. Yes.

Q. You know you commenced a suit to clear the title to the Oregon, don't you, as located by Datson?

A. I think we did, yes.

Q. Then, you made an application for a restraining order to keep us from what you supposed we were doing in breaking down your flume, didn't you?

A. I think so.

Q. What time on the third day of October, 1910, did you swear to the complaint before Grover Winn, the original of which has been offered in evidence in this case, do you remember?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. Some time in the afternoon, I think it was.

Q. And the Mr. Burch's name that is mentioned in the papers in [852] this case is the same Burch you are speaking about? A. The same Mr. Burch.

Q. Then, you built this little piece of flume you spoke about up there near your dam on the day of the third—now, on the night of the third, you went up there and got what you call some kind of a diversion of water from Gold Creek, near where your dam is now, and into this little piece of flume?

A. We did get a diversion; yes.

(Testimony of R. A. Kinzie.)

Q. And that was on the night of the third of October?

A. Yes, that was the evening of October third.

Q. Now, then, you got a little diversion into that twelve or thirteen foot flume that you had there where your present dam is constructed—what was the length of that piece of flume you put in there?

A. Twelve or fourteen feet long.

Q. That is what I am speaking about—you turned some water out of Gold Creek into this 12 or 14 feet of flume and let it run out the other way down the creek?

A. We diverted it from its natural channel.

Q. You didn't have any flume on the other end to connect it up with? A. Not at that time.

Q. And didn't have any grade prepared for 300 feet down the creek?

A. We didn't have any grade down the creek; no.

Q. Why was it that you got in this hurry, to leave your grade line at least 300 feet down the grade and on this morning of the third to go up there and undertake to go in on this property where you now have your dam?

A. Well, as soon as we show any intention, we want the water [853] right—we have to make the diversion very quickly or other people will get ahead of us and hold us up afterwards; we have learned that by experience.

Q. You thought you were gaining some advantage by going up there and getting the diversion into this 12 or 14 foot flume?

(Testimony of R. A. Kinzie.)

A. No, we were showing due diligence.

Q. Altho you put it through that and let it run out of the other end, you call that due diligence, do you? A. I certainly do.

Q. You thought it was very material to the interests of your company in the fight over what you termed the water right that you get this dam in up there and to make some kind of a diversion of the creek? A. It certainly was material.

Q. And that is the reason that you had our men who were engaged in work up there and opposing you in getting this piece of flume in the creek, that was the reason you had them arrested?

A. No, it was not.

Q. Well, after you had arrested them, you had plain sailing and you went up in the night-time and put it in?

A. There was no rocks blasted down on us or rocks rolled down on us—there were some men up there later, I understand.

Q. This was the very identical work you were engaged in when you swore out the warrants against these parties?

A. Yes; we had been continuing that work for some time—that was part of the general scheme for diverting water.

Q. Part of the general scheme you have been talking about? A. Yes, sir, it was.

Q. Some time after they were arrested and bound over they were [854] indicted by the grand jury at Ketchikan and you were down there at Ketchikan

(Testimony of R. A. Kinzie.)

attending court for some weeks? A. I was.

Q. Who did you have up here when you were in Ketchikan—who, if anyone, did you have here to represent you—to report to you as to what our people were doing in regard to work up there on this property?

A. Why, I had no particular one report to me.

Q. You did get reports down there from two different individuals up here, didn't you?

A. Yes, I think two different people did telegraph to me what was going on.

Q. I will hand you this telegram and ask you if you got a telegram of that kind—you got a telegram like that? A. Yes, sir; something like that.

Q. Did you get one just exactly like that?

A. I think this is it—I wouldn't say, but I think it is.

Judge WINN.—We now offer this telegram and ask to have it copied into the record. (Admitted.)

Judge WINN.—I will read it: Juneau, Alaska, November 1, '10. R. A. Kinzie, Ketchikan: Reports just here are Ebner people have destroyed dam and flume in Basin; claim loads of rocks are being used to smash portion of flume already built by Treadwell. Appeal alleged to have been made to special deputy to arrest offenders—officer replied he had no right make arrest. Will get details later; McLean going to Basin with view of handling situation. (Signed) O'Brien.

Q. This O'Brien was the editor of the paper down here? A. I judge that it was; yes.

(Testimony of R. A. Kinzie.)

Q. You know it was, don't you, that sent you the telegram? [855]

A. I think so, yes—I have reason to believe it was.

Q. Now, I will ask you what steps you took after that to have those parties arrested when you were informed of this fact by Mr. O'Brien?

A. I have forgotten what was done. I must have answered the telegrams, but I don't remember how I answered them.

Q. You have an assistant superintendent up here at the Alaska-Juneau mines, don't you, and did have then?

A. There is an assistant superintendent on the ground, yes.

Q. What is his name? A. Up there?

Q. Yes. A. Jones was in charge of that work.

Q. Did you wire back to Jones to have those people arrested? A. I did not.

Q. Did you wire back to Kennedy, your assistant at Treadwell, to have warrants sworn out for them?

A. I don't remember, but I think not.

Q. Did you wire O'Brien?

A. No, I don't think I answered O'Brien's telegram at all.

Q. Did you take any steps at all toward having the people arrested in any way, manner, shape or form?

A. I don't remember of any steps—I think there was something done in Ketchikan. I know they were taken to the district attorney and shown to him, but I don't remember of any steps that were taken

(Testimony of R. A. Kinzie.)

to have them arrested. I am pretty sure there was not.

Q. By you? A. Yes.

Q. You didn't consider it of any importance at all to you?

A. That they were smashing up our flume? [856]

Q. Yes. A. Indeed, I did.

Q. But you didn't take any steps to have them arrested?

A. The men on the ground here could attend to that.

Q. Did you give Jones any instructions about it before you left here?

A. No, Kennedy had that in charge—that was left with Mr. Kennedy.

Q. You left the whole matter with Kennedy?

A. Yes, I left the whole matter with Kennedy.

Q. You know there were four or five of them arrested? A. I afterwards heard there was; yes.

Q. And discharged on demurrer to the complaint and were never arrested again?

A. I don't know how that came out.

Q. When did you first hear they were arrested?

A. I think I heard it while I was in Ketchikan, if I am not mistaken. I think Kennedy wired me something to that effect.

Q. After this second set were arrested you went on then and completed your entire flume line and connected it up with this little piece of flume you had down there at your dam?

A. No, the dam was not connected up—the water

(Testimony of R. A. Kinzie.)

was turned through the entire flume on November 14th.

Q. But you kept at work right along until you got up there—used diligence as you say?

A. We had been working right along, continuously.

Q. Now, prior to your attempt or your making of a diversion of water, as you term it, at your present dam, which is what we claim the boundary line between the Lotta and the Parish #2, I will ask you if you did not attempt, prior to that time, to make a diversion of water further up the creek? [857]

A. Why, I shouldn't call it a diversion in the sense that the other is a diversion; that water was turned out and the idea was to bring it down and sluice off the gravel on the bench.

Q. Is not this a fact, that prior to the day of the hearing of the application for a restraining order that we made in Case #803-A, which was the first action commenced, that prior to that hearing all your endeavors had been looking towards the diversion of water from where Mulligan posted his notice, which was about 150 feet further up the creek than where your dam is at present located?

A. Not at that point, no—it is below that point.

Q. About how much further up the creek from your dam was it you were seeking to make a diversion at the time the hearing was had upon the application for the first restraining order?

A. I should say it was about 50 or 60 feet.

Q. Can you point it out on Plaintiff's Exhibit "N," about what point?

(Testimony of R. A. Kinzie.)

A. If you have the photograph I could show you the exact point—I think you introduced it. I would say it was some point about here (referring to “N”)—it would show right in here.

Q. About where there is a round dot made on the right-hand bank of the creek as you go up from the common boundary line of the Lotta and the Parish #2 as shown upon Plaintiff’s Exhibit “N”—that is about right, is it not?

A. That is about right, yes.

Q. It was from that point that you commenced making your first grade—you expected to take the water out from that point? [858]

A. Yes, the first tunnel was put at that level.

Q. And how far did you run the first tunnel in down there when near Snowslide Gulch before you abandoned it and commenced the other tunnel?

A. That tunnel might have been in ten or twelve feet—I don’t remember the exact length. The total footage, if I remember, of both tunnels was about 331½.

Q. How came you after that hearing to change your grade and go further down the creek?

A. We saw we were getting into trouble there, we were being interfered with and we naturally wanted to stop any reason at all for a thing of that sort and we came down as low as we possibly could on that account; and for the further reason that if the flume was put on at the original point of diversion, that the flume would have to be set on top of slide rock and would have to be anchored. At the other point we

(Testimony of R. A. Kinzie.)

sank the flume down in what would have been the grade; in other words, we have a solid rock intake at the falls, while above it would have been a fanlike intake which would have to extend up the creek and especially subject to be taken out by high water in Gold Creek.

Q. Leaving out those reasons, isn't this the only reason why you moved down the creek? Is it not a fact that upon the preliminary hearing you became absolutely satisfied that you were on the Lotta patented claim and then you thought by moving down the creek and it maybe getting on an unpatented claim, that you would stand a better chance to get that water—wasn't that your reason? A. No.

Q. That is not your reason?

A. No, I knew where the Lotta claim was. We would have been [859] safe if we were on the unpatented claim, we would have been absolutely safe, but we have every reason to believe and I had at that time that our original point, even with the posting of the notice, was outside of the line of the Lotta as it actually is.

Q. I want you to answer me whether it was not that you had become absolutely convinced on that hearing that you were on the Lotta patented claim—wasn't that your reason? A. No.

Q. That had nothing in the world to do with it?

A. Oh, yes, of course, it had something to do with it—it had something.

Q. I believe you testified yesterday that the place you were taking the water now is the only practicable,

(Testimony of R. A. Kinzie.)

feasible, sensible place to take that water to bring it down to Gastineau Channel to there be applied to generating power to run the 200-stamp mill?

A. Did I go that strong?

Q. Will you put it that strong?

A. No, I won't put it that strong—it is the most practicable and by long odds the most economical point.

Q. Now, Mr. Kinzie, isn't this a fact—that you want to bring that water down here for the purpose of generating power and have it conveyed from Gastineau Channel to the Treadwell Company's mines?

A. No, I never heard of that before.

Q. You have at the present time in the Treadwell mines down the beach here at Sheep Creek a plant and are generating power there, applied to an electric machine, and are conveying that power around to Juneau across Gastineau Channel and over to the Treadwell mills? [860]

A. We have such a plant; yes.

Q. You have the wires in and the poles all up, have you not?

By the COURT.—That is as far as you need go in that.

Q. You are using the power to generate electricity for application over at the Treadwell mills?

A. We are using part of our power; yes.

Q. And you say you are not endeavoring to get this water to come down here to couple up with that power and carry it over to the Treadwell?

A. We are not, no, sir. The Treadwell has noth-

(Testimony of R. A. Kinzie.)

ing whatever to do with it.

Q. Now, you have another power to Gastineau Channel here that you are putting in up at Mendenhall Glacier?

A. You mean the Alaska-Juneau?

Q. No, I mean the Treadwell.

Objected to as immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you this, if the Alaska-Juneau Company has not always been dominated and run by the Alaska-Treadwell people—is it not a subsidiary corporation of that corporation? A. It is not.

Q. The same stockholders? A. They are not.

Q. A large portion of them the same stockholders?

A. I don't think any of the stockholders in the Alaska-Juneau hold any stock in any of the properties on Douglas Island with the possible exception of Mr. Bradley.

Q. Never have? A. As far as I know. [861]

Q. Will you testify positively—you have the books of the Alaska-Juneau Company?

A. No; but I have seen the list of the people who own the stock and still have it.

Q. Haven't the superintendents of the people across the channel always been superintendents of the Alaska-Juneau? A. Not as I know of.

Q. Ever since you have been here that has been the case?

A. Since I have been here, yes; before that time, no.

Q. I will ask you which one is the parent corpora-

(Testimony of R. A. Kinzie.)

tion, the Alaska-Treadwell or the Mexican?

A. I don't know who is the parent of those corporations.

Q. You don't know which the ruling, the predominating, corporation is?

A. No, they are entirely separate, except as to management.

Q. You are also making preparations for your allied companies up here to take up the water of Salmon Creek, which is just above here, are you not?

Objected to as immaterial. Objection sustained.

Q. Now, I will ask you if you are not the general superintendent of these allied corporations, the Alaska-Juneau, the Alaska-Treadwell and the Mexican—is there any other corporation now in that bunch? A. The Alaska-Juneau is not in it.

Q. You are the superintendent, though, of all those corporations are you not—the corporations I have named? A. I am.

Q. When did Mr. Bradley become the predominating feature in the Alaska-Juneau Gold Mining Company?

A. I didn't know he was. He has been consulting engineer and [862] president of the company, so they naturally look up to him and consider his judgment on the mine, as most people do.

Q. Is it not a fact that your consulting engineers and all your officers, so far as Alaska transactions are concerned, are common officers of the Alaska-Juneau Gold Mining Company and these companies across the channel?

(Testimony of R. A. Kinzie.)

A. No, the Board of Directors are entirely separate.

Q. I mean the officers in Alaska.

A. No, with the exception of the man in charge on the ground, Jones—he is not connected with the Treadwell in any way.

Q. I will ask you if you, as an individual, have not been endeavoring, I will say, as superintendent of these various corporations, to acquire about all the water powers that are within any reasonable distance of the town of Juneau?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. Why, if there is any water power in the vicinity of Juneau we thought we needed, we would certainly try to get it, either by purchase or otherwise.

Q. You have at present Sheep Creek, Gold Creek, Salmon Creek, Mendenhall Glacier Creek—any other creek?

Objected to as immaterial and not confined to the Alaska-Juneau Company. Objection sustained.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Has the Alaska-Juneau Company any water power or water rights or any source of electric supply other than the water right that has been taken up here, that you have testified to here in this case?

(Testimony of R. A. Kinzie.)

A. They have water rights in Silver Bow Basin for use at the mine.

Q. That is the one used in connection with the operation of the thirty-stamp mill and the five-stamp mill? A. Yes.

Q. Aside from that have you any other water rights or water supplies anywhere? A. No, sir.

Q. Have they any interest in Sheep Creek?

A. None whatever.

Q. Judge Winn has been inquiring of you in regard to some arrests made on the third of October of some men up on the Lotta claim, on complaint sworn to by you. When were you first interfered with in the conduct of your work by these men or by men up on the sidehill on the Lotta claim?

A. That was some days previous to October third.

Q. About how many days?

A. It was on the 26th or 28th.

Q. Had there been any interference previous to that? A. None that I know of.

Q. Had your men been working here previous to that? A. They had been working previous to that.

Q. And had not been interfered with? A. No.

Q. How long previous to that time had they been working there?

A. They had been working there for a couple of months.

Q. Tell me what occurred on or about the 26th day of September that led up to these arrests—on the 26th or 28th?

A. That was the time after Burch arrived. We

(Testimony of R. A. Kinzie.)

had gone up the Basin and were standing on the Jualpa high line flume looking at a map; Burch and myself were standing on the high line [864] flume about 100 feet, I should say, below Miller's Gulch, looking at a blue-print, when he glanced up the hill and asked me what those men were doing—there were two men standing there—and I said, "I don't know," and we started again looking over the map, and he said, "Those fellows are blasting over there; nobody said a word, called 'fire' or anything of the sort." We watched it a while and I said, "We had better get under cover," and we jumped behind the flume and the blast went off and scattered the rock all around us, and as soon as the blast was over we got up and I crossed Gold Creek just above, 50 or 60 feet above, a narrow point, above where our dam is and went up the hill, and I think the first man I saw there was Ed Seitz or Al Black, and I asked him who fired the blast and he pointed down the hill and said, "That young fellow there," who I afterwards found out was Middleton; and I went and asked him, I said, "What in the world are you blasting for without giving people warning?" And he said, "I did give warning," and I said, "You did no such thing. We were standing on the flume and you deliberately set off that blast without giving us any warning whatever," and just then Black came along and said, "He is just a kid; don't talk to him,—if you have any complaint to make or any talk to make, make it to me," and I said, I would make it to him and very promptly; and he said, "I have orders to do this—

(Testimony of R. A. Kinzie.)

if you have anything to talk over, better go and see Mackey," and I said "All right; where is Mackey?" and he said, "He is at the boarding-house," and I said, "All right; we will go and see him," and we went up there to the boarding-house, around the mill, and didn't find him there and went over to the grade on the other side of the creek and he was not there, and then [865] went down to the mill grade. He was just starting—they told us—he had gone down town and we followed down the road and caught up with him just outside the limits of Juneau. He was walking in company with Summers and Shattuck, and I started to tell him about this thing and tried to ask him if it was possible to arrange a schedule by means of which, if those men cared to continue working there, they could warn our men so they would not be injured if they desired to blast and we would do the same thing—I would furnish him a blasting schedule for our men and we would blast at fixed periods and he could do the same with his men and by that means no one would be hurt, and he refused to do it.

By the COURT.—Is it possible—you were standing near the falls—that you couldn't hear the warning the men tried to give you when they were blasting?

A. Yes, it would be possible—we were standing considerably below the falls.

Q. What did you do about this thing—when were you up there next?

A. The next time I went up there on the morning of October third.

(Testimony of R. A. Kinzie.)

Q. Tell the Court what occurred on that morning—in the meantime between this and October 3d had you used any efforts or endeavors to get these men to quit blasting in such a way as to injure your men below, except that you had seen Mackey?

A. No, I don't think anything further was done.

Q. Did you see Black that morning of October third?

A. Yes, I think I remember seeing him on the hillside.

Q. Did you have any conversation with him?
[866]

A. None whatever.

Q. Tell what occurred on the morning of the third of October.

A. The crew were working, blasting the rocks and brush, putting the boxes for the intake of the flume in position and some time after my arrival the crew of men came down from the direction of the Ebner mine over the old road and started to work, first rolling large boulders that they would detach and roll down the hill, in the endeavor, we thought, to keep our men from working there, and later on they would punch holes down with a bar and fill the hole with powder and blast it down and then pile piles of rocks, pile them up and put a stick of powder under it and blast it out in the air and it would drop down in the canyon immediately below where our men were working; and during the morning, the dam was fairly well completed, and we had the boxes twice broken by large boulders rolled down from the hill

(Testimony of R. A. Kinzie.)

above. In the meantime whenever they would call "fire," we would get out of the way, but they kept calling "fire" and wouldn't blast and after a while we waited until we saw the smoke of the fuse; and then they conceived the scheme of lighting a fuse and not putting powder on it. We finally got our dam in and the box over and they rolled down some rocks and smashed it up and we saw it was useless to continue under those circumstances—we were afraid if we did continue some of our men would be killed.

Q. Was anybody struck by a flying rock?

A. I know that I was and I know that Burch was.

Q. How many times were you hit?

A. I was hit a couple of times. When I was standing down in the creek it was impossible to see where the men were.

Q. Did you hear any warning of "fire," when the blasts were set [867] off?

A. No, I could hear no warning at all where I was, more on account of the roar of the water. Burch was over on the hillside on the Jualpa flume part of the time and he would beckon to us and part of the time he would not—we couldn't tell when they were blasting or not blasting.

Q. Do you know whether any warning was given at all times when they blasted or not—on that particular day?

A. No; two or three times I know particularly later on in the day, when it was not given—they simply blasted.

Q. Now, Mr. Kinzie, on the morning you speak of

(Testimony of R. A. Kinzie.)

were the men working when your men were not at work?

A. No; as soon as our men went back, they would stop working and sit down and pile up another pile of rock ready.

Q. I hand you here a picture, Defendant's Exhibit #16. Explain that to the Court.

Judge WINN.—We are going to object to this photograph—

(By Judge WINN.)

Q. I understood you to say in your direct examination in reference to this photograph that this shows a blast that was fired off up there by our people on the third?

A. No, on the morning of the fourth.

Q. That our people fired?

A. I think that Mr. Graham set that shot off—Al Graham.

Q. You charge him with the crime of having set off these blasts, etc.—you confined that to the third, did you not, in your complaint against him?

A. In the complaint, yes; the complaint was made out on the third—this is the morning afterwards.

Judge WINN.—I object to it. I understood him to say the other day that this is one of the blasts fired off on which these [868] men were arrested and I object to this and move to strike from the record in the case this exhibit.

Objection overruled. Motion denied. Plaintiff allowed an exception.

(Testimony of R. A. Kinzie.)

(By Mr. HELLENTHAL.)

Q. I show you here a picture marked Defendant's Exhibit No. 15 and ask you to look at it—do you see any mounds of rock piled up in that picture?

A. Yes, sir.

Q. I call your attention to this and ask you to indicate those mounds of rock to the Court and mark them with a pencil—put an "A" above them.

Same objection. Objection overruled. Plaintiff allowed an exception.

Q. Can you mark those mounds?

A. No; my marking does not show very plainly—one mound was just below where the two men are standing on the sidehill; the other can be seen on the left-hand side of the picture below where a stream of water runs down the hill and a large detached boulder is shown towards the upper right-hand corner of the picture.

Q. On what part of the picture are the mounds of rock shown?

A. Just above the center of the picture.

Q. Those are the mounds of rock you have been testifying about? A. They are.

Q. Now, during all this time, did any of these men come down on the grade where you were?

A. No, they did not.

Q. Did any of them come anywhere near the grade?

A. No, the closest man I saw was Hunsucker. He came down and set off a blast—it was the first blast fired that day. I should say that it was 60 or 80 feet

(Testimony of R. A. Kinzie.)

up the cliff—not a cliff [869] there; it is very precipitous, though.

Q. Your possession of the grade was not disturbed except by firing the shots?

A. No, it was not.

Q. Were these the same men that were arrested at this time and was this the same incident that led to the indictment and trial of Mackey and others and their conviction by a jury upon the indictment?

A. It was.

Q. This was the incident that led to it?

A. This is the incident; yes, sir.

Q. Now, about these arrests that occurred while you were in Ketchikan. You have testified, I think, that you did not direct the arrest of these men. What did you do in an endeavor to stop them—first, along about the first of October when these rocks were rolled down and the latter part of September when this disturbance was created up there, where was the United States Judge for this division?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I think he was out of the district.

Q. How long had he been out of the district?

A. For some time. I don't know how long.

Q. How long was it before he got back?

A. I think it was along about at least the latter part of the month before he returned.

Q. Was there any Judge in the first division of

(Testimony of R. A. Kinzie.)

Alaska that could issue an injunction?

Objected to as calling for a conclusion.

Q. Was there any Judge within the first division of the District [870] of Alaska? Any District Judge?

A. No District Judge—none that I know of.

Q. What work were you doing that you were being interfered with on or about the first of October that led to these arrests with referenec to the work that you were doing at the time that the Ebner Company sought to enjoin you during the latter part of August and the first of September in Case 803-A?

A. It was the same work.

Q. That injunction, was it granted or refused?

A. It was refused.

Judge WINN.—We object to that. Objection sustained.

Q. Now, when you got to Ketchikan and got this telegram from O'Brien, what, if any, steps did you take to prevent the destruction of your property?

A. I don't remember the exact details. I answered Mr. Kennedy's telegram but I have forgotten the exact reading of the telegram.

Q. Did you take any steps toward getting an injunction?

A. Well, I must confess I have forgotten what action was taken in Ketchikan—whether it was an injunction asked for or what it was.

Q. Do you remember sending me a telegram?

A. I do.

Q. What was the purpose of that?

(Testimony of R. A. Kinzie.)

Objected to as a self-serving declaration.

Objection overruled. Plaintiff allowed an exception.

A. I remember the incident but I had forgotten for the time being whether it was an injunction we asked for or not—in fact I am not perfectly plain on that point yet. I know [871] you were sent for and came down there, but I have forgotten what form of relief was asked for.

Q. It was not any criminal relief anyhow?

A. No, it was not.

Q. To refresh your memory—do you remember my going to Ketchikan and getting a restraining order at Ketchikan and an order to show cause, which was afterwards heard before Judge Lyons up here in Juneau, being Cause #823-A, in which an injunction *pendente lite* was afterwards issued and the restraining order was made permanent during the pendency of the action?

Objected to as not the best evidence. Objection sustained.

Q. I now again call your attention to a photograph marked Exhibit 12 and ask you to look at it. I understand that was taken on the 4th of October?

A. It was—early in the morning of October 4th.

Q. You testified to Judge Winn that about 300 feet of flume grade had been completed at that time?

A. Yes, sir.

Q. When you said completed—what did you mean by that? A. Ready to receive the flume.

Q. Had work been done on the balance of the flume

(Testimony of R. A. Kinzie.)

grade? A. It had.

Q. As indicated on that picture? A. It had.

Q. Does that show a picture of the flume grade correctly on that morning?

A. It shows the flume grade from the mouth of the tunnel to the edge of the cliff.

Q. And what portion of that work as indicated on that picture was completed? [872]

A. A strip from the tunnel up to where it shows a small slide in this picture and further on there is another strip 30 or 40 feet long.

Q. The balance had not yet been completed?

A. No, the balance had not yet been completed.

Q. What work had been done at that time or prior to that time beyond the cliff?

A. At that time the dam had been completed, the intake built and the rock work started.

Q. How is that?

A. The dam had been built, the grade had been built to the tunnel, part of the tunnel driven and two crews working both ways on the cliff.

Q. The cliff was all rock work?

A. The cliff was all rock work; yes.

Q. That had not yet been completed at that time?

A. No, it had not.

Q. What was the reason you had not done the rock work before that?

Objected to. Objection overruled. Plaintiff allowed an exception.

A. The cliff was of such a nature, you would have to work from both ends and not more than two men

(Testimony of R. A. Kinzie.)

could work in the face; they had to be hung out on staging and carry the work along and holes had to be driven above to blast off and a trench built below and it was very slow and tedious work.

Q. They required bridges from both ends?

A. Yes, sir.

Q. What was the cost of the work done by you after the first of August in connection with the construction of this grade [873] and building the flume and diversion of water?

A. The cost of the work on the flume at Gold Creek?

Q. I am asking how much money was expended by you in connection with the diversion and appropriation of this water?

A. We spent something over \$15,000.

Q. Do you know where the Basin road is?

A. Yes, sir.

Q. In passing up and down the Basin road is this flume grade of yours in plain sight?

A. Yes, sir; at times.

Q. For the entire distance from the dam to the tunnel?

A. It is, after you come to a point called Cape Horn on the road.

Q. Did anyone speak to you about this matter before Mr. Bent spoke to you about it?

A. They did not.

Q. Now, the flume built from the tunnel to the compressor that was built afterwards, after the fourth of October? A. It was.

(Testimony of R. A. Kinzie.)

Q. When was the water actually applied by you to the beneficial use of driving the compressor?

A. It was applied on the morning of November 17th.

Q. And has been used ever since?

A. Continuously.

Q. You testified to me yesterday about a tower that was on that ground. What kind of a tower is it—what is it used for?

A. They proposed to carry transmission wires up—the wires have never been put up.

Q. There is a line of towers running along the hill-side?

A. Yes; some on our property and some below.
[874]

Q. Now, Mr. Kinzie, about that line of claims known as your Summit claims, extending from Silver Bow Basin to the beach to Gastineau Channel, and indicated on the map—exhibit 11—the map that shows your entire property, that tunnel that Judge Winn has been examining you about, did the driving or using of that tunnel, did that in any wise interfere with the other plan of operation or was that a subsidiary plan, or how was that? Explain that to the Court.

A. Why, that line through there, the main object of having it patented and holding it is in case at some future time—if the project is successful and the ground above the line of the tunnel driven through Snowslide Gulch is worked out, we could obtain additional back by driving a tunnel through

(Testimony of R. A. Kinzie.)

this patented strip of ground from sea level and work out the additional backs in the mine without the necessity of sinking shafts.

Q. There is no way of getting the water down to the mill that way? A. No, there is not.

Q. And how would that be used in connection with the other plan—would the use of one mean the abandonment of the other?

A. No, not at all; it is subsidiary to the other.

Q. I want to ask you one question about that Borean Pit. You stated that your answer with reference to the condition of that rock on the southerly end of the Parish claim was based upon your opinion? A. Yes, sir.

Q. I want you to explain to the Court the conditions that you found there, the character of the rock and other matters [875] and things upon which your opinion is based.

A. The country southeast of Gold Creek, from Miller's Gulch to Snowslide Gulch, which would define the ends and Gold Creek at the bottom, from there to a point, I should say, three or four hundred feet vertically higher on the hillside, is covered by two slides, the most easterly slide, southeasterly slide, coming from a point just inside the opening of Snowslide Gulch; the northerly slide coming from a point just above the beginning of Miller's Gulch, to the right as you look up the Gulch; the bedrock as shown in Miller's Gulch for the entire cross-section of Gold Creek, and on the other end and where it is exposed in Snowslide Gulch, is of identical char-

(Testimony of R. A. Kinzie.)

acter and differing entirely from the material as exposed in the Borean Pit.

Q. What is the character of the rock exposed in Snowslide Gulch?

A. It is a schistose material, colored green.

Q. Explain whether it has a well-defined strike.

A. Yes, it has a very well-defined strike. The material of the ore body from the footwall which shows in the mountain just above is a diorite or a changeable diorite. It is also known as a *metagabriel*. That is entirely distinct and separate from the bedrock as exposed on the other sides, as I have just briefly described, and for this reason, as soon as you see any piece of rock you can determine immediately if it belongs to the bedrock in position or has come from some outside source.

Q. Now, what is the condition of the rock in the Borean Pit—what does it compare with?

A. It is of identical character with the rock that forms the main ore body of the Taku mine or the Ebner mine. [876]

Q. How far is that distant, that main ore body, from the Borean Pit?

A. I should say horizontally about five or six hundred feet.

Q. Above it on the hillside?

A. Yes, sir, considerably above it.

Q. What is the stratification and strike of the boulders that appear in the Borean Pit?

A. They have no distinct stratification—it is a dioritic rock.

(Testimony of R. A. Kinzie.)

Q. Are there any quartz seams in it?

A. Yes, the rock is cut by quartz seams and the principal quartz seams shown in the Borean Pit in that large piece of rock there would be at practically 90° to the strike and pitch and dip of the stringers as shown in the schist that form the bedrock at this point.

Q. How did the quartz seams run in that locality,—with or against the strike?

A. The quartz seams in the bedrock conform with the schistosity of the material.

Q. How do the quartz seams as they appear in this boulder or rock at the Borean pit, how do they run with reference to the strike of the country?

A. To the strike—the seams in that bedrock there?

Q. Yes.

A. It would be about 90°—it is very flat.

Q. Do you recall the time that answer was prepared in 803—that is the first injunction suit—when the Ebner Company first brought the suit?

A. Yes, sir—the first one? Yes.

Q. Do you remember how much time we had to prepare that answer?

A. As I remember the thing, we had a very short time. [877]

Q. Do you remember what we did in connection with the preparation of that answer, what we did in the way of ordering certified copies from the commissioner?

A. I remember there was a good deal of scurrying around trying to get certified copies of various pa-

(Testimony of R. A. Kinzie.)

pers such as location notices, transfers, etc.

Q. What did we get in the way of certified copies of the Oregon?

A. We got, as I remember, a certified copy of one of the Oregons—I think it was the first Oregon—and in place of sending us a certified copy of the proper Oregon claim they sent us a copy of the Oregon claim that is in the vicinity of the—the commissioner sent the wrong copy.

Q. Do you remember why that second Oregon was not set up in that answer at that time?

Objected to as incompetent, irrelevant and immaterial.

Q. Do you remember what I told you about it?

A. As I remember it, there was no time after that to get it—I remember that was the reason.

Q. What did I tell you about it?

A. No, I don't remember.

Q. That work that shows on that exhibit 15, that picture, that grade line there—that was done prior to October third?

A. Prior to October third; yes, sir.

(By Judge WINN.)

Q. You know that summons was served on you in 803-A on the 26th day of August, wasn't it?

A. The first suit?

Q. Yes.

A. No, I don't remember the date. [878]

(The summons and return admitted in evidence.)

Q. If it was served upon you on the 26th of August, 1910, and you didn't file your answer until

(Testimony of R. A. Kinzie.)

September first, 1910, you had about five or six days to get up this data you were furnishing Mr. Hellen-thal, did you not?

A. We had no idea any suit would be brought on that ground and I know personally I had to ransack around and get all the papers I could as quickly as possible.

Q. You as superintendent was more or less about the property but you didn't even know what mining claims you had in Silver Bow Basin?

A. I think I knew the claims.

Q. The fact is you had forgotten about the Oregon location made by Corbus until the suit was over?

A. No, sir, I had not.

Q. You never had done any assessment work on it? A. Yes, sir.

Q. Not until 1905—you hadn't done anything in the world on that claim, had you?

Objected to.

Q. You not being satisfied with the old Oregon location you had a new Oregon location made over almost identically the same ground the old Oregon was made over?

A. The second Oregon was made over almost the same ground, yes.

Q. And not satisfied with those two locations you had another Canyon location made which covered a good portion of the ground of both the Oregon claims?

A. No, sir, it covers entirely different ground. I don't think it covers the same ground.

(Testimony of R. A. Kinzie.)

Q. Do you know anything about it? [879]

A. I absolutely know.

Q. When you take that location of the Canyon claim which is up the creek about 60 feet from your dam and has a parallel line along there as the lode line of your discovery and then you take 300 feet on either side, don't you take a good portion of your Oregon claims?

A. We take a portion of them; yes.

Q. Now, in that very identical answer you state that you have done the assessment work—you say that the annual assessment work for each year since the year 1899 has been performed on both of said claims by the said Alaska-Juneau Gold Mining Company. Now, then, could you by any possibility have thought that when you were signing that answer, you were including in there the Datson location which was only made in 1910?

Objected to as argumentative; objection sustained. Plaintiff allowed an exception.

Q. Then, you do know as a matter of fact that when you signed that answer you had nothing else in the world in there except the old Wyoming claim and the old location of Corbus to base your defense on in that suit? A. I think it was sufficient.

Q. Now, I call your attention to an affidavit that you signed and filed in 803-A and ask you if that is your signature in that affidavit? A. Yes, sir.

Judge WINN.—We offer this affidavit in evidence as a part of the recross-examination.

It is admitted as Plaintiff's Exhibit "JJ," copy

(Testimony of R. A. Kinzie.)

attached hereto and made a part hereof.

Q. On this exhibit 12 the work indicated on there near the [880] tunnel shown on the property, how far away is that from your dam in the creek? I mean by that how much flume-line does it take to reach from that point up to your dam, from where the grade is there.

A. From the end of the grade?

Q. Take it from the tunnel.

A. From the tunnel I should say about 800 feet.

Q. Eight hundred feet of flume? A. Yes, sir.

Q. It would be a shorter distance in a straight line?

A. It would be a shorter distance in a straight line.

Q. This is the work you had done on the 4th day of October in regard to grades?

A. No, that is not all of it; there was some work done up at the other end.

Q. Now, a great lot of these pictures you took on the morning of the 4th of October—the trial of these criminal cases down here was put off until you got these pictures—you got them the morning of the fourth after the people were arrested?

A. I don't know whether it was put off or not. I know we got them on the morning of the fourth.

Q. You know you were a witness in these cases and they didn't come off on the fourth?

A. They didn't come off while I was up there.

Q. And you went over night and put in that piece of flume and put up some of the dams and then went

(Testimony of R. A. Kinzie.)

up there the next morning and took the majority of these pictures?

Question withdrawn.

Q. You talked about not hearing the cry of "fire" when the [881] blasts were fired by our people. You know that Burch was put over on that high line flume of the Jualpa Company so he could watch and hear the alarm of fire when sounded by our people, and he was put there for the purpose of communicating it to you people so you could get out of there?

A. Yes, he was put there to watch them.

Q. You know that Burch testified in your presence in the trial of that criminal case that every time a blast was fired by our people warning was given?

A. No, he did not.

Objected to as hearsay. Objection sustained.

Q. Now, you thought the matter of the diversion of that water was so important to be made that you risked your life and risked the lives of your employees according to your testimony to get in there and take it, did you?

Objected to as argumentative. Objection sustained.

Plaintiff allowed an exception.

Q. You are willing to be pounded up by the rocks to get in there to get a diversion of that water?

Objected to. Objection sustained. Plaintiff allowed an objection.

Q. Have you been using that water all the winter or has it been frozen up most of the time?

A. Been using it all the winter.

(Testimony of R. A. Kinzie.)

Q. All the time? A. All the time.

Q. To run your air-compressor?

A. To run our air-compressor; yes.

Q. It has not been frozen up with that water running along Snowslide Gulch?

A. They might have lost one or two days by anchor ice or something. [882]

Q. You have been up there how many times this winter?

A. I didn't go up many times this winter. I suppose two or three times.

Q. How many men have been working up there this winter?

A. Four men, I think, in the tunnel and one sharpening steel—sometimes I think only three men.

Q. You have been mucking out with a wheelbarrow? A. Yes, sir.

Q. Have you extended that tunnel into the mountain-side there further than the place where you are turning to the left? After you get in there, to furnish a tunnel to put your flume line through—have you run it beyond that point?

A. The main tunnel—the branch we are driving now is the flume tunnel—we have branched off from the main tunnel to drive the flume tunnel.

Q. How far have you driven the main tunnel in where you branch off to drive this tunnel through for your flume? A. I think that is 60 or 80 feet.

Q. Have you been in there measuring it, lately?

A. I was in there last Sunday.

Q. Did you measure it?

(Testimony of R. A. Kinzie.)

A. No, sir, I did not—I never personally measured it.

Q. Two or three men in there have been mucking out all winter with a wheelbarrow?

A. And done very excellent work; yes.

Witness excused. [883]

[Testimony of B. D. Stuart, for Defendant.]

B. D. STUART, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name? A. D. B. Stuart.

Q. Where do you reside?

A. Missoula, Montana.

Q. What is your business, trade or profession?

A. Surveyor and mining engineer.

Q. What school are you from?

A. University of Montana.

Q. When did you graduate from there?

A. In 1902.

Q. What, if any, other school did you attend subsequently?

A. I never attended any school subsequently.

Q. What did you do after you left the University of Montana?

A. I was with the United States Geological Survey for about seven years and the Reclamation Service.

Q. What did you do after that?

A. I was engaged in mining and surveying and

(Testimony of B. D. Stuart.)

mining engineering in the Coeur d'Alene district of Idaho.

Q. Who did you work for?

A. The Federal Mining & Smelting Company.

Q. How long?

A. It was in the neighborhood of four years.

Q. How long has it been since you quit the Federal Mining Company?

A. Within the past year—just about a year ago.

Q. What are you now doing?

A. Private practice.

Q. Do you know the Alaska-Juneau Gold Mining Company? A. I do. [884]

Q. Do you know Mr. Kinzie? A. I do.

Q. Mr. Kennedy? A. I do

Q. Mr. Wyndham? A. I do; yes, sir.

Q. Do you know where the property is of the Alaska-Juneau Gold Mining Company in Silver Bow Basin, where it is situated? A. I do.

Q. Do you know where the property of the Ebner Gold Mining Company is situated? A. I do.

Q. Do you know about where the Lotta claim is situated upon the ground?

A. I know where the stakes that are claimed as the Lotta stakes are; yes, sir.

Q. What, if anything, did you do in the fall of the year 1910 in the way of surveying the Lotta claim—first, I will ask you if you are familiar with the patent notes of the Lotta claim? A. I am.

Q. As they appear in the patent in evidence here, together with the plat that appears in that patent?

(Testimony of B. D. Stuart.)

A. I am.

Q. Do you know where the stakes are that are on the ground and claimed as the stakes of the Lotta in the testimony that has been offered here in this case by the plaintiff? A. I do; yes.

Q. Have you seen those stakes? A. I have.

Q. You know Gold Creek at that point?

A. I do.

Q. I will ask you to look at that plat—marked Defendant's Exhibit Number 6 for identification—and state to the Court [885] what it is.

A. That is a plat showing Gold Creek and the stakes that are claimed as the stakes of the Lotta upon the ground and the lines connecting them.

Q. I will ask you to explain to the Court what, if anything, you did in the fall of last year looking toward the making of surveys? First, what, if anything, did you do toward the platting and surveying of the creek as indicated upon that plat?

A. I surveyed the creek upon the ground and platted it upon the map.

Q. How did you survey it upon the ground?

A. I surveyed it with a transit.

Q. What course did you run and what method did you employ?

A. I made the traverse from the road.

Q. I now call your attention to the plat marked for identification Defendant's Exhibit #7 and ask you if the creek as represented on that exhibit is the same as on Identification Number 6.

A. I believe it is; yes.

(Testimony of B. D. Stuart.)

Q. You made both maps?

A. I made the other one entirely and this one was from my office. I made portions of this map myself and I checked it over and found it to be correct.

Q. I will ask you to state to the Court what you did in the fall of the year 1910 looking toward the location of that creek upon the ground.

A. The first thing I did was to make a traverse line down the road which is shown on the map as a sinuous double line.

Judge WINN.—Run along your traverse line.

The WITNESS.—I have only a portion of the curve—I have not [886] located them all on the map. I began at my station #93, where I put my pointer, etc.

* * * * *

Q. Every corner that is marked with a circle has been established by you by actual survey upon the ground? A. It has; yes, sir.

Q. And those not marked with circles have not been so established, but have been platted in from other data? A. Yes, sir.

* * * * *

Q. Now, I hand you Defendant's Exhibit #4, that purports to be a location notice of the Oregon claim made by J. P. Corbus, and ask you to look at it. What, if anything, did you do in the way of surveying or platting the Oregon claim in accordance with that notice upon your plat here?

Judge WINN.—We object to anything pertaining to the J. P. Corbus location of the purported claim

(Testimony of B. D. Stuart.)

called the Oregon, for the reason that it has been shown conclusively by the witness Kinzie, who was on the witness-stand, that no assessment work was ever attempted to be made upon this location since 1905, and any evidence of the location of it, if it ever existed, is incompetent, irrelevant and immaterial, and does not tend to prove any of the issues in this case.

Objection overruled. Plaintiff allowed an exception.

Judge WINN.—And this objection goes to anything in connection with the J. P. Corbus location.

By the COURT.—Yes, sir, and exception is allowed.

A. I platted the Oregon claim, the Oregon lode, as called for in this notice upon exhibit #7.

Q. Mark on exhibit 7 the Oregon location as platted according [887] to that notice—"Oregon location as located by J. P. Corbus"—will you please write that so we will know where it is?

A. I will mark it along—the west side line of the Oregon.

Q. That is the one, is it? A. Yes, sir.

Q. Where does the easterly end line of the Oregon as thus platted fall with reference to the easterly end line of the Colorado as platted in accordance with the patent notes?

By the COURT.—There is no easterly end line, is there? A. Northeasterly.

Q. Where would the northerly or easterly end line of that Colorado intercept the northerly or easterly

(Testimony of B. D. Stuart.)

end line of the Oregon thus platted?

A. The northeasterly end line of the Oregon as platted according to the location notice would strike the northeasterly end line of the Colorado if continued, projected, upon the same course, projected rather—

By the COURT.—The Corbus location of the Oregon.

A. Yes. That is, the two lines mentioned at the same course and the Oregon line if produced would practically correspond with the northeasterly end line of the Colorado.

Q. Will you extend the northeasterly end line of the Oregon lode as platted upon your plat 7 in the direction of the Colorado to show where it would fall with reference to the northerly end line of the Colorado?

A. That is as near as I can do it with this instrument.

Mr. HELLENTHAL.—I now offer in evidence the location notice of the Oregon location as made by Datson on July 28, 1910.

Judge WINN.—We object to this location notice. It is insufficient on the face of it to constitute any notice; it is incompetent, irrelevant and immaterial for any purpose of [888] this case. It distinctly appears before the Court now uncontradicted, by the witness Kinzie, that the Oregon location made by J. P. Corbus some time in 1899 was abandoned and forfeited, at least as early as the year 1905, by this same company, and it also affirmatively appears in

(Testimony of B. D. Stuart.)

this case that Datson made the pretended location that is being now tendered in this case, and it was an attempt made by this same company to relocate property which it had already forfeited which would make the location null and void for any purpose, and that affirmatively appears in this case at this time.

By the COURT.—The objection will be overruled at this time, subject to your right to argue the question upon the final argument of the case.

The location notice is marked Defendant's Exhibit #29. Copy is attached hereto and made a part hereof.

Mr. HELLENTHAL.—I now offer in evidence a deed from Datson to the defendant company for this claim so located.

Same objection. Objection overruled. Plaintiff allowed an exception.

The deed is marked Defendant's Exhibit #30. Copy is attached hereto and made a part hereof.

Q. I now hand you Defendant's Exhibit #29, which purports to be a notice of location of the Oregon claim made by R. G. Datson July 28, 1910, and I ask you what, if anything, you did in the way of surveying the claim described in that notice upon the ground.

Same objection and exception to all this line of testimony.

A. I located some of the stakes of this claim as they are upon the ground.

Q. Tell the Court what you did in the way of surveying the claim upon the ground. [889]

(Testimony of B. D. Stuart.)

A. I found and located upon the ground indicated upon the map—

Q. When you say the map you mean exhibit 7?

A. Yes, sir; the southeast corner, the southwest corner.

Q. What are the numbers of the corners?

A. They are marked—the southeast corner is marked #2.

Q. Are they marked 2 there?

A. Yes, sir; the southwest corner marked #1 and the northwest corner marked #4. I didn't locate that other corner.

Q. Did you find the witness stake?

A. No, sir; I believe I did find a witness stake, come to think of it. It is just above the creek on the Lotta claim.

Q. You found the witness stake to which corner?

A. Corner #3.

Q. Which would be the northeasterly corner?

A. Yes.

Q. Proceed.

A. The way the claim is platted upon the map the north end line was drawn parallel to the south end line as indicated by the stakes upon the ground and give the required distance. The points for corner #2 and 3 join.

Q. What did you find in the way of stakes at corners #2 and 3?

A. I didn't find Number 3 corner. Corner #2, I found. I believe it was a 5x5 unpainted post.

Q. How was it marked?

(Testimony of B. D. Stuart.)

A. It stood three feet above ground, in a mound of stone; the post is at the edge of a bunch of underbrush, on the south side of the bunch, north of Snow-slide Gulch and about 60 feet north of that creek. The post is marked Post #2 Oregon—post Number 2 again.

Q. What, if anything, did you find at Corner #3 of the Oregon? [890] A. I didn't find that.

Q. What did you find at Corner #1?

A. An unpainted post standing in a small pile of rocks, alongside, and a little north of the trail leading from the north end of the Jualpa dam to the cabin occupied by the workmen on the new Alaska-Juneau flume and 50 feet west of Gold Creek—marked Post #1 Oregon.

Q. What, if anything, did you find at Corner #4 as platted on the map by you?

A. I found a post 2 inches by 4 inches and trimmed off at the top, standing 2 feet above ground and marked on the east side, Post #4 Oregon. The post is on the hillside and is about halfway between Gold Creek and the road. It can be seen from the road.

Q. How is that witness corner marked that you found? A. I didn't get up there.

Q. You merely saw the stake?

A. I merely saw the stake and the man that put it there indicated it to me as the stake that was located.

Objected to.

Q. How was the Oregon as thus located upon the ground platted upon your exhibit 7?

(Testimony of B. D. Stuart.)

A. It is platted in accordance with that survey.

Q. Please step here and on the westerly side line of the Oregon as thus platted write these words, "Oregon as Located by Datson."

(Witness does so.)

Q. What, if anything, in the way of rock in place, bearing gold or other precious metals, did you find upon the Oregon location—upon the surface of the Oregon location thus indicated by you? [891]

Judge WINN.—We move to strike all the evidence pertaining to the location of the second Oregon claim known as the Datson Oregon claim, for the reason that there is a variance in the claim as it has been located upon this plat and map by the witness and the allegations of the pleadings in this case.

Motion denied. Plaintiff allowed an exception.

Q. Answer my last question.

A. I never took any samples there.

Q. Did you find any quartz in place?

A. I found quartz seams in place; yes, sir.

Q. Where did you find them?

A. Along the point of the hill, just about above the point marked "Cabin" on the Oregon lode as indicated on exhibit #7—above the flume.

Q. How far above the flume?

A. I should say 60 feet or more, east of the cabin.

Q. Would it be on the boundary of the Parish or off from the Parish?

A. The point I refer to is off the Parish.

Q. On the Oregon?

A. Yes, sir, about 60 feet off the Parish.

(Testimony of B. D. Stuart.)

Q. What would you say as a mining engineer that the quartz in place that you found there carried?

A. I wouldn't say anything as to the contents of it without an assay.

Q. Was it gold-bearing rock?

A. It was quartz—it was rock such as an assay for gold might be obtained from.

Q. What, if anything, did you in the way of surveying the Alaska-Juneau flume-line as indicated upon this map? [892]

A. I surveyed it.

Q. Where did you find that platted line to be with reference to the place you have platted it on this map?

A. I think practically there. I have not located all the points on it, but I think that is very close to it.

Q. What have you done in the way of locating in the dam? A. I have located in the dam.

Q. How does that jibe with this map?

A. I think it jibes all right.

Q. The dam in so far as it crosses the creek is located on what claim?

A. Located on the Oregon.

Q. And where is it located with reference to the southerly side line of the Lotta as that line is marked here—lower side line of the Lotta as claimed by the Ebner Company?

A. The dam itself acrossed the creek it located, I should say, almost entirely southwest of that line.

Q. You located the compressor, surveyed that in too? A. I did.

(Testimony of B. D. Stuart.)

Q. How is that upon the ground as compared with the way you have it platted on here?

A. I have checked it on the map—it lies all right.

Q. It is *correct* located? A. Yes, sir.

Q. As well as the pipe-line, the line from the flume to the compressor? A. Yes.

Q. And Snowslide Gulch you have marked here—is that located correctly on the map?

A. I believe so.

Q. As well as all the other matters and things indicated on [893] the plat, they are all correctly platted? A. I believe so.

* * * * *

Q. Do you know where the Borean pit is?

A. I do.

Q. What, if anything, have you done in the way of surveying in the Borean pit?

A. I have surveyed in the Borean pit in reference to the claims around there, claim lines.

Q. Is the Borean pit correctly platted on exhibit 7?

A. It is.

Q. Did you plat in the Parish No. 2 on that plat?

A. I platted it as correctly as I could. I found two stakes of the Parish #2, that is, I presumed them at the time as being Parish #2 stakes—they were not marked for it.

Q. How did you plat it—according to the notice?

A. I platted it according to the—the two stakes I found in the ground are connected with a fine black line. I platted the rest of the claim in accordance with the location notice.

(Testimony of B. D. Stuart.)

Q. You found two stakes. Please, mark those with a letter "P," the two stakes that you found upon the ground of the Parish #2.

(Witness does so.)

Q. (By the COURT.) That is the end line of the two claims? A. Yes, sir.

Q. They are the southerly line of the two claims?

A. I found them on the ground and they seemed to agree in a general way with what the location notice of the two claims called for—I presumed them to be the stakes; they were not marked.

Q. Did you mark the Parish #2 on the plat in accordance with [894] that? A. Yes, sir.

Q. And it is correctly platted on exhibit 7?

A. Yes, sir.

Q. Did you plat the Borean pit in accordance with your surveys and measurements actually made on the ground? A. Yes, sir.

Q. Is that correctly platted in?

A. Yes, sir. I began that survey of the Borean pit from the post for the southeast corner of the Parish #2.

Q. You began from that corner? A. Yes, sir.

Q. And marked it in reference to that?

A. Yes, sir.

Q. It is marked Borean pit?

A. I will further state that the line between these two corners for the Parish upon the ground is brushed out and a number of hoops are set on one right near the southwesterly edge of the Borean pit, the line is indicated in that way upon the ground.

(Testimony of B. D. Stuart.)

Q. What is this little cut you have here?

A. That is in the Borean pit. I may further say in connection with my location of the Parish claim that a portion of the southwesterly side line beginning with the southwest corner and extending over to the brow of the hill just above the two tunnels, marked "tunnel" under the word "nought" on this exhibit, was brushed out and two or three hoops were upon it, and I began at this southwest corner, used that line as brushed out, to give me the direction, and it seemed to correspond in accordance with the southwesterly side line of [895] the Lotta on the ground and continued that line over across Gold Creek and up over the ridge on the far side above the Gold Creek road, and on that line which I must have run out for two thousand feet, I made diligent search for the northwest corner and found no corner there and made diligent search for the northeast corner but found no stake there.

Q. What is that little black picture you have there looks like a tunnel in the Borean pit?

A. That is an open cut.

Q. What is the size of that?

A. At the time I measured it, it was five feet wide, 12 feet long from mouth to face, and eight feet deep at the face.

Q. I hand you exhibit #21 and ask you to look at it and state if that is the same Borean pit.

A. It is; yes, sir.

Q. It indicates that open cut? A. It does.

Q. Mark that open cut on that picture—open cut—

(Testimony of B. D. Stuart.)

right across the face of it.

A. It is indicated on the picture so it can be recognized, it is partially filled with snow and a shovel is stuck into the snow.

Q. At what point were you standing when the picture was taken?

A. I was standing at the point which is the brushed out end-line or the common end-line of the Parish #1 and 2 as indicated by stakes on the ground.

Q. Did you get to the bottom of that—did you dig down to the bottom of that open cut?

A. I did not, at that time.

Q. Did you do it afterwards? [896]

A. I have not since; no, sir.

Q. What is the depth of that cut, do you know?

A. Eight feet deep at the face—

Judge WINN.—We object to that as incompetent, irrelevant and immaterial—no sufficient foundation laid.

The WITNESS.—I measured it.

Objection overruled.

Q. How deep was it?

A. Eight feet deep at the face, at the time I measured it.

Q. Now, how much of the Borean pit is across the line on the Parish No 1? A. It shows on the plat.

Q. What is the character of the ground there with reference to being horizontal or perpendicular—what is the pitch of it?

A. It slopes toward the northwest—that is the general surface of the ground.

(Testimony of B. D. Stuart.)

Q. How much is the pitch approximately?

A. It is fairly level there. I couldn't say exactly; probably 15 or 20 degrees—25, maybe.

Q. Could any work done in the way of washing out or sluicing out or cutting out the Borean pit develop the Parish #2 claim?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, no foundation laid for the witness to answer and calling for a conclusion of the witness.

Objection overruled. Plaintiff allowed an exception.

A. I can't see how it would develop the Parish #2 as a quartz lode.

Q. What is the character of the rock in the Borean pit? First, I will ask you in the bottom of that open cut, with reference [897] to being in place or otherwise. A. It is slide rock.

Judge WINN.—We object—no sufficient foundation laid to answer the question.

Objection overruled. Plaintiff allowed an exception.

Q. Is it in place or not in place?

A. It is not in place.

Q. What is the character of the rock in the Borean pit—anywhere in the Borean pit? I will change that. What is the character of the rock in the Borean pit, any place within 75 feet of that open cut in any direction, with reference to being in place or otherwise?

Objected to. No foundation laid.

(Testimony of B. D. Stuart.)

Objection overruled. Plaintiff allowed an exception.

A. Not in place—it is slide rock.

Q. How deep in your judgment is the slide?

Same objection. Objection overruled. Plaintiff excepts.

A. I measured the depth of it yesterday, at that open pit—from the bottom of the open cut as it is now to the rim of the Borean pit on the south side, just up from the cut. It is between thirty and forty feet deep there, and the bottom of the cut is still in slide. There has recently been dug a hole in the bottom of that open cut.

Q. How recently?

A. Within a week, anyway—within a few days.

Q. What did you find in the bottom of the hole?

A. This hole uncovered some large loose boulders, but I could see down between the loose boulders and could see some drift material, I should say three feet below the bottom of the cut as it was made originally.
[898]

Q. How large were those boulders?

A. I should say they were a foot or two in diameter.

Q. Where is that hole?

A. It is in the bottom of the open cut.

Q. Indicate it upon exhibit 7 by writing the word “hole.”

A. I will mark it with a small square and then I will mark that “hole.”

Q. Are there any other holes that you saw yester-

(Testimony of B. D. Stuart.)

day that have been dug recently? A. Yes, sir.

Q. Where?

A. Just opposite the mouth of the open cut and across the drain line in the bottom of the pit is a large boulder of ledge rock. There is a small hole dug just below that at a lower elevation than the bottom of the boulder.

Q. Mark that boulder with a circle upon the plat No. 7—mark it, “boulder.”

(Witness does so.)

Q. Now, indicate upon the plat with reference to that boulder the place of the second hole of which you spoke—mark that with a small circle and mark it “hole.”

(Witness does so.)

Q. What did you find in the bottom of that hole, if anything?

A. Slide rock. Also I could see the bottom of the large boulder there and on the side of the boulder nearest to the open cut, open pit, somebody had started to dig under the boulder and had not got very far within, but I dug out with my pick there and I could shove my pick right in under the boulder.

Q. I want you to show upon one of these pictures where that boulder shows—will that show it? [899]

A. Yes, that will show it.

Q. That is exhibit 9. I hand you Number 9 and ask you to mark the word “Boulder” upon the boulder as it appears upon that picture.

(Witness does so.)

Q. That boulder you have marked on Number 9, is

(Testimony of B. D. Stuart.)

that the same boulder you have indicated and marked upon the plat? A. It is.

Q. In that hole you found in the bottom of the Borean pit you say you found some boulders in the bottom of the hole. Were those boulders that were recently deposited in there or were they boulders that appeared to be part of the original slide? I am referring to the hole in the bottom of the pit.

A. Of the open cut?

Q. Yes.

A. I should say they were boulders that were there at the time the slide took place—they had the appearance of never having been disturbed.

Q. Where does the bedrock show nearest to the Borean pit on its strike?

A. It shows up about 100 feet to the west of the open cut, in the Borean pit, as I paced it.

Q. 100 feet to the west of the open cut in the Borean pit?

A. As near as I paced it and it shows up again about 35 feet below that point. Both of these exposures are in the bottom of the drain which comes through the open pit. An additional reason for my being sure that the material in the open cut, in the vicinity of the open cut, is slide rock is from the fact that where the bedrock itself does show up a stream of water shows and above that there is no water shows—it is apparently under the surface—and [900] from the fact that the water shows there *shows* that is the first place where the bedrock is.

(Testimony of B. D. Stuart.)

Q. Did you find the bedrock in Snowslide Gulch?

A. Yes, sir.

* * * * *

Q. Will you please mark upon exhibit 7 the various points in which the bedrock is exposed in the neighborhood of the Borean pit and mark the places so marked by you with the word "bedrock"? I mean the points nearest to the pit.

(Witness does so.)

A. Those are approximately the two points at which I saw the bedrock exposed.

Q. How many points did you name here?

A. Two.

Q. Did you see bedrock at the creek?

A. The bedrock as I saw it in those two points are in the bottom of the creek where the spring shows from under the slide.

Q. Did you see bedrock in Snowslide Gulch?

A. Yes, sir, I did.

Q. Mark the bedrock you saw in Snowslide Gulch also.

A. I saw bedrock in Snowslide Gulch on the south side of the gulch—there is a cliff, I should think, approximately in that position.

Q. Mark it with the word "bedrock."

(Witness does so.)

Q. Did you see bedrock at the creek—first, what is the direction and strike of the country at that point?

A. I took a number of observations of the bedrock in the creek canyon and where it is exposed at the lower end of the Borean pit and the creek bottom

(Testimony of B. D. Stuart.)

and Snowslide Gulch, and I should say the average strike of the country as indicated [901] by the planes of the schist is about 4 north, 40 or 50 west, and dips to the northeast at an angle of about 60 degrees from the horizontal.

Q. Assuming that to be the strike, where would the bedrock show at the creek bank, on the same strike that it shows up in the Borean pit and the Snowslide Gulch?

A. Those pencil lines indicate about the strike of the country and the dip to the northeast.

Q. Did you see bedrock on the bank of the creek, on a line with that pencil? A. I did; yes, sir.

Q. And with the strike of the country?

A. Yes, sir.

Q. Mark the point on the plat where you saw the bedrock on the bank of the creek.

A. It is exposed on the bedrock above and below the Alaska-Juneau flume, up and down.

Q. Mark that line you have drawn indicating the strike of the country with the words "strike of country."

(Witness does so.)

A. It dips 60° to the northeast.

Q. You have already marked it at the Snowslide Gulch? A. Yes; this is the bedrock.

Q. Did you take any samples of bedrock at those points? A. I did; yes, sir.

Q. Have you those here?

A. Yes; this is a sample taken in Snowslide Gulch.

Q. I hand you here a piece of rock marked for

(Testimony of B. D. Stuart.)

identification Exhibit Number 31, and ask you to look at it and state where it came from.

A. This piece marked 31 came from the point on the south side [902] of Snowslide Gulch which I have indicated on exhibit 7 with the word "bedrock" with a lead pencil mark alongside of it.

(Exhibit 31 is admitted in evidence.)

Q. I now hand you a piece of rock marked Defendant's Exhibit #32 and ask you to look at it and state where that came from.

A. That came from the south side of Gold Creek canyon, just above the Alaska-Juneau flume and on the line of the strike of the country from the last-named exhibit.

Q. Approximately at the point marked "bedrock"? A. Marked bedrock upon plat Number 7.

(Exhibit 32 is admitted in evidence.)

Q. I now hand you a piece of rock marked for identification #33 and ask you to look at it and state where it came from.

A. That piece came from the bed of the small stream which drains the Borean pit and approximately on a line between the points where I obtained the two previous samples.

Q. Where is it with reference to the point you have marked on exhibit 7 as bedrock?

A. I believe this came from the lower one of the two places marked bedrock in the Borean pit, in the lower end of the Borean pit.

Q. You took all these samples yourself?

(Testimony of B. D. Stuart.)

A. Yes, sir.

(Exhibit 33 is admitted in evidence.)

Q. I now hand you a piece of rock marked Exhibit 34 and ask you to look at it and state where that came from.

A. This came from the large boulder heretofore referred to as being opposite the mouth of the open cut in the Borean pit—I knocked this piece off the big boulder. [903]

Q. Is that the boulder marked by you on exhibit 7 with the word Boulder? A. It is; yes, sir.

(Exhibit 34 is admitted in evidence.)

Q. These samples are all off the same boulder (referring to a pile of rock)?

A. Yes, sir, they are.

Mr. HELLENTHAL.—These are numerous samples off the same place and I ask they be marked 35 to 40, inclusive. (They are so marked.)

Q. I now call your attention to a number of pieces of rock marked 35, 36, 37, 38, 39 and 40 and ask you to look at them and state where they came from.

A. I do.

Q. Where did they come from?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Just below the large boulder in the Borean pit, the place where I have my pencil now and indicated by a lead pencil marked “pole.” There is a hole dug almost underneath the lower side of the

(Testimony of B. D. Stuart.)

large boulder, recently dug there. I took these samples from about two square feet on the side of that hole.

By the COURT.—This boulder is the big rock shown in the picture?

A. Yes, sir, I took them from the side of that and out of the drift which showed underneath the boulder there, at a lower elevation, at the bottom of the boulder in the undisturbed drift material. The material from which I extracted these rocks was material that had never been disturbed by pick or in any other way, and was evidently as it had been at the [904] time the slide occurred.

(The six pieces of rock are admitted in evidence as Defendant's Exhibits 35, 36, 37, 38, 39 and 40.)

The WITNESS.—They are all different varieties.

Q. I will now ask you what is the character of the various exhibits last received in evidence with reference to being alike or unlike.

A. They are all unlike one another.

Q. Various kinds of rock—what does that indicate?

A. One of them—No. 39—is apparently a water-worn pebble.

Q. Tell what the others are.

A. Thirty-five is a piece of iron-stained quartz; 36 is probably a granite; 40 is termed a greenstone; 37 looks like a very micaceous granite; 38 is a piece of the character of greenstone, different from the other mentioned.

(Testimony of B. D. Stuart.)

Q. What does that indicate to you as a mining engineer?

A. It indicates to me that these pieces of rock must have come from various localities and no two of them from the same original formation, you might call it, or bedrock.

Q. How do the other samples of the bedrock that have been offered in evidence, Numbers 31, 32 and 33, compare as to the character of the rock?

A. All of them are what would be termed chalcolithic schist.

Q. I mean as to being identical or otherwise in character? A. They are identical in character.

Q. How does exhibit #34 compare as to these former exhibits just referred to?

A. That is entirely different rock.

Q. What do you call the other samples of the bedrock? A. Chalcolithic schist. [905]

Q. What is the name given to 34?

A. It looks like a greenstone that had been altered and silica introduced in some of the original elements of the rock.

Q. Has sample 34 any strike at all, any stratification? A. No, sir, it is massive rock.

Q. Is there anything to indicate the strike of the country where that rock came from—is there anything in the large boulder to indicate?

A. The only thing in the way of planes that could be determined are joint planes which are spaced quite far apart. These joint planes seem to have a strike of about north 5° east and dip westerly at

(Testimony of B. D. Stuart.)

an angle of about 20° from the horizontal. Those are the only indications of any planes I could distinguish in the rock.

Q. How do those planes strike with reference to the planes of the bedrock that you found at the points indicated on 7 as bedrock?

A. Those planes would be almost at right angles if the planes of the bedrock strike north 40 to 50 west and dip to the east at an angle of about 60° to the horizontal.

Q. What would that indicate to you with reference to the big rock being in place or otherwise?

A. It would indicate that the large boulder is not in place as bedrock.

Q. Have you made an examination of the country above the Borean pit?

A. I have been over it. I have not made any particular examination of it.

Q. Are there any indications as to the place where the slide broke over? [906]

A. Yes, I think so.

Q. Can you mark on this plat any point above the Borean pit where rock of the character indicated by the large boulder and the other smaller ones may be found?

A. I think such a point would lie off of that map but in a general easterly direction from the Borean pit up toward the head of Snowslide Gulch, perhaps more to the north.

Q. Such rock is found at the point you have last indicated?

(Testimony of B. D. Stuart.)

A. I have never been up there, but I judge from the character of the topography that this slide came from the point I have described.

Q. Now, I will ask you, in your opinion, is there any rock in place within a matter of 75 feet in any direction from the point marked open cut—from the open cut marked by you in the Borean pit?

A. You mean horizontally?

Q. Yes, horizontally 75 feet?

A. I should say not, none exposed.

Q. You surveyed the flume-line of the Alaska-Juneau indicated on exhibit 7? A. Yes, sir.

Q. You have surveyed the creek from the point indicated as the Alaska-Juneau dam up the creek?

A. Yes.

Q. What is the condition of the grade, or if the water were taken up at a point say anywhere from 75 to 150 feet further up the creek, where would the flume grade fall with reference to the place where it is now located?

A. In order to maintain a similar grade from such a point, I would say that the flume would probably in elevation be [907] perhaps fifteen feet higher than the present flume grade, but horizontally it would differ very little on account of the steepness in the bank.

Q. Where would the flume pass with reference to the dam?

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—The only application I could see

(Testimony of B. D. Stuart.)

it could have would be whether this was such a change as would be a total abandonment of their first location of water.

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. Below the point marked Alaska-Juneau dam on No. 7 for several hundred feet, 300 at least, I should say, the cliff is nearly vertical—in fact, part of the distance where the present flume grade is constructed the cliff almost overhangs it, so that a grade 15 feet above it in elevation would practically occupy almost the same position horizontally, within very small limits.

Cross-examination.

(By Judge WINN.)

Q. How old are you? A. 33.

Q. I believe you stated you were a graduate of some school of mines?

A. Graduate of the University of Montana.

Q. School of Mines or State University?

A. State University.

Q. When did you graduate from that university?

A. 1902.

Q. What did you take up then?

A. I took up a general scientific course. [908]

Q. In the same university?

A. In the same university and then the next year after I was graduated I did some special work in engineering.

Q. What was your scientific course?

(Testimony of B. D. Stuart.)

A. It is the course of study which leads to the degree of Bachelor of Science, I believe.

Q. How long did you pursue that in the university?

A. Four years.

Q. That would take you up to 1906?

A. I mean my regular course was terminated in 1902, my four years.

Q. When did you quit the school for other work?

A. I was out in 1900 with the United States Geological Survey—I was out about five months in that year.

Q. In what State? A. Montana.

Q. How long did you remain in that survey?

A. I was with them altogether from then until the fall of 1906, I believe it was.

Q. In your course in the university did you study surveying and mining engineering?

A. Surveying, not mining engineering at that time, except I had a course in geology.

Q. After leaving the Government service what did you do?

A. I went to the Coeur d'Alene country—was employed by the Federal Mining & Smelting Company.

Q. As mining engineer? A. Yes, sir.

Q. How long did you serve in that capacity?

A. From the spring of 1907 to June of last year.

[909]

Q. When did you get acquainted with Mr. Bradley?

A. I never met Mr. Bradley before this morning—yesterday, rather.

(Testimony of B. D. Stuart.)

Q. Who sent you here last fall?

A. No one sent me.

Q. In whose service did you come here?

A. I was sent for by Mr. Kinzie.

Q. What time did you arrive here last fall?

A. It was on the 15th of October, I believe.

Q. Mr. Kinzie indicated that he wanted you to come here and do some surveying on Gold Creek?

A. At what time—after I arrived?

Q. Yes.

A. Gold Creek and elsewhere.

Q. Was it your principal business to do some surveying on Gold Creek in regard to this property in litigation?

A. I spent two or three weeks up there surveying immediately after that time.

Q. Was Mr. Burch here when you arrived here?

A. Yes, sir, he was.

Q. Mr. Burch was up there with you a considerable portion of the time? A. He was not.

Q. He was not in your survey party? A. No.

Q. He was up there a good deal on the property while you were there? A. He was not.

Q. He was not on the property a good deal?

A. He was with me the first time—that is the only time I remember his being on the property. [910]

Q. What date did you arrive here?

A. The 15th of October.

Q. How long did Mr. Burch remain here after you got here?

A. I believe Mr. Burch went away at the same

(Testimony of B. D. Stuart.)

time—as I recollect it, he went away soon after the trial at Ketchikan and then came back again.

Q. When did you leave?

A. I left shortly before Christmas.

Q. Were you putting in considerable of your time preparing data for the trial of this case while you were here?

A. More or less of the time.

Q. The fact is, you devoted a great portion of your time to that, did you not?

A. No; I should say probably half the time. I was engaged in other work part of the time while I was here.

Q. Over at Treadwell? A. Yes, sir.

Q. How long had you known Mr. Kinzie before you came here?

A. I never had known him before.

Q. You passed about how many weeks upon this property that is in controversy and the surrounding property making a survey last fall?

A. I think from the time I first arrived in the middle of October I was there, as I remember, about two weeks in the fall and then from time to time after that I made various trips up there.

Q. Who assisted you, what other surveyors of the Treadwell assisted you in going over this property?

A. No other surveyor.

Q. Wasn't Whalen with you? [911]

A. No, only one or two days.

Q. You just had your staff of assistants, without any surveyors being with you?

(Testimony of B. D. Stuart.)

A. Yes, sir; up to the time that Judge Lyons issued his order allowing us to go on the Ebner Company property Whalen was not with me.

Q. What time did you spend on the Ebner property besides the time you spent on the defendant company's property up the Basin last fall?

A. It would be hard for me to say in days. I was up there so intermittently.

Q. And after the order was granted by the Court for you parties to go on the Ebner property to make your survey Mr. Whalen accompanied you for what length of time on the work there?

A. Two or three days, as I remember it.

Q. Was there any other surveyor with you during that time? A. Mr. Lindsay.

Q. What portion of that time was he with you?

A. About the same time Whalen was, as I remember.

Q. Did you get all the data and maps and exhibits you have been testifying from while you were here last fall or have you been here just prior to this trial gathering additional data?

A. A very small portion of it I have gathered since I came here.

Q. When did you make your Exhibit Number 7?

A. I didn't make it—only a portion of it. I only made a portion of it.

Q. Was it prepared under your instructions?

A. No, sir; not originally. It was prepared according to my notes—from my notes.

Q. Who did prepare it? [912]

(Testimony of B. D. Stuart.)

A. I believe Mr. Whalen.

Q. Do you know when it was completed?

A. It must have been about two weeks ago, I think—not entirely completed. There has been some additions made to it from time to time since.

Q. There has been quite a number of additions made during the course of this trial?

A. Yes, sir; the Borean pit and one or two other items on it were put on since that time.

Q. Is that all—what about this other plat Number 6, when was that made?

A. I made that from my own notes while I was away—while I was in Montana.

Q. Has anything been added to or taken from that since you came here and since the trial commenced?

A. Yes, the claim marked out there in red—

Q. The claim marked there in red has been cut on since you came here? A. Yes, sir.

Q. And since the commencement of the trial?

A. No, I believe not since the commencement of the trial.

Q. When?

A. I think it was about the time the trial commenced or a little before as I remember it, that was put on there.

Q. Who put it on? A. I did.

Q. Do you remember whether the trial had commenced or not?

A. If it had, it was during the first day or two of the trial. I don't remember exactly.

Q. The one marked in red on 6 of yours—what

(Testimony of B. D. Stuart.)

does that indicate? [913]

A. That indicates the Lotta claim as put upon the map, according to the distances from corner 5 and corner 2 of the Lotta, as they are supposed to be, which are indicated in the notes of the patent.

* * * * *

Q. I believe you stated that in the survey of the two Oregon claims you took the location notices for your basis?

A. For the earlier location, but for the later one I took the posts as I found them on the ground.

Q. For the later or Datson Oregon claim you did not take the location notice into consideration?

A. I just took the posts as they are on the ground and connected them up.

Q. Now, the Borean pit, as you have located it by those dotted lines on your exhibit, was that location made by an actual survey; in other words, do I understand that you just platted the Borean pit there with these dotted lines approximately, or have you got the lines absolutely correct, from survey?

A. I wouldn't say they are absolutely correct, but I located about seven points at the angle as they show here, around there, starting at the post you now describe as the southeast corner of the Parish #2 and running down to that point. The open cut I located in the same way, locating both ends of it.

Q. The Borean Pit is not a pit, in the common acceptance of the word?

A. No, I should consider it a placer wash.

Q. The part which comes up here, which you have

(Testimony of B. D. Stuart.)

written on this map Borean pit, which is the wider part of it—is that [914] deeper than the lower part if it, excavated deeper?

A. The bottom with reference to the rim?

Q. I mean excavated deeper?

A. Somewhat deeper, I think.

Q. Than the lower part of it?

A. Yes, sir.

Q. Do you remember about the depth of the lower part of it where you have marked the hole—did you measure to see how deep it was?

A. I took observations to see how deep it was, by means of a hand level.

Q. What is the depth of it at its deepest point?

A. I took the elevation at a point on exhibit 7, which is indicated on the map just west of the large boulder and marked hole. I started from the bottom of that and took the difference in elevation between the bottom of that hole and the rim of the pit which is quite distinct.

Q. Did you make such calculations that you could approximate the depth of it? A. I did.

Q. What is the approximate depth?

A. At that point the depth is 40 feet.

Q. When did you make that measurement?

A. I believe that was yesterday I made that measurement.

Q. You never had measured it until yesterday?

A. I never measured the elevation particularly; no.

Q. That is one part, then, that you added to this

(Testimony of B. D. Stuart.)

map since the commencement of the trial?

A. That is not on the map.

Q. But it is data you have added and have marked the point on the map this morning? [915]

Q. Was there any loose dirt in the bottom of that pit at its deepest point or what was there yesterday—at the deepest point?

A. Well, it is rather hard to know what you mean by the deepest point in the pit. There is a general slope of the pit from the upper or eastern end to the lower end.

Q. I mean where you measured it—where you testified you made the measurements?

A. At the mouth of the open cut there?

Q. Yes.

A. None revealed; no, sir.

Q. What time were you up there yesterday?

A. It was about four o'clock in the afternoon.

Q. Was there anybody else up around there?

A. No, I was alone.

Q. You saw where there had been—

A. I saw where there had been fresh diggings done.

Q. How did you find the part of the open cut or wash from what you have marked on this plat “hole” down to where you have marked bedrock—did you find any loose dirt on the bottom anywhere along that?

A. Yes; as you go from the east end of the pit to the westerly end or mouth of it, I would say the wash seems to get increasingly shallow as would be antici-

(Testimony of B. D. Stuart.)

pated, because the bulk of the slide lies perhaps up above and it gets shallower until it finally disappears entirely below and the bedrock shows up above the rim of the canyon.

Q. How far is it where this last bedrock shows up from Gold Creek approximately?

A. About 300 feet from the creek to the canyon—it is less than that to the rim of the canyon. [916]

Q. How far to the rim of the canyon?

A. I can approximate that—straight across, I would say, it is about 100 feet.

Q. To the rim of the canyon? A. Yes, sir.

Q. The canyon is quite wide there?

A. From south to north? A. Yes, sir.

Q. That point that you measured down to—is the canyon wide there?

A. No, both sides of the canyon there are quite precipitous—it is difficult to climb up either side.

Q. From the top of the canyon where you start to descend the creek on one side and likewise from a point on the other side is a good deal wider than the actual creek-bed at the surface of the water?

A. Yes, sir, although the slopes are pretty steep there.

Q. I understand you drew some lines here for Mr. Hellenthal at a point where you say you discovered bedrock in Snowslide Gulch, from which you obtained some rock that has been offered in evidence in this case—as I understand, you approximately drew those lines as you indicated on this exhibit?

A. I did, yes—they are just approximately—they

(Testimony of B. D. Stuart.)

are quite close to the truth. I think I used a protractor in putting them on.

Q. You said the formation or strike of the formation of the country runs approximately along those lines? A. I believe so; yes, sir.

Q. Then, the Oregon lode claim would not be made with respect to the formation?

A. Not with respect to the formation—there are some quite prominent quartz seams that strike in a different direction. [917]

Q. What did you say the dip of that was, to Mr. Hellenthal?

A. Of the general formation? Of the schist?

Q. Yes.

A. It is, as I determined, about 60° from the horizontal, to the northeast.

Q. Did you accurately determine that?

A. I made perhaps a dozen observations in different places, maybe more than that.

Q. And you say it is approximately what?

A. 50 or 60° as I took them.

Q. As I understand, you do not testify that these lines you drew here are absolutely correct, they might go a little further to the east or west than you have drawn them—you have approximately drawn them?

A. No; I put them in there by means of a protractor, those lead pencil lines. I used this fine black line as north and turned an angle of 40° by means of a protractor.

Q. Did you go down to the creek to see where the

(Testimony of B. D. Stuart.)

outcroppings were or bedrock appeared down in the creek? A. I did; yes, sir.

Q. Does the outcropping there in the creek as it actually exists correspond in line with the lead pencil marks you have drawn—you say you found bedrock down by the creek? A. Yes, sir.

Q. And found bedrock up here at these two places that you have marked bedrock in one part of the Borean pit? A. Yes.

Q. And you found bedrock up in Snowslide Gulch? A. Yes, sir.

Q. Now, you got three points there which would determine the [918] course of a line?

A. Approximately, yes.

Q. Do your lines you have on here, your lead pencil lines, follow up the three principal points you find the bedrock?

A. I think what you are getting at, whether on the ground I followed that line in determining this?

Q. Yes.

A. Yes; as near as I could I ran through what I thought would be the line.

Q. Indicate down at the creek the closest part of the creek you found the bedrock?

A. Right at the bank.

Q. Mark it bank—

A. Right in the bottom of the creek, below the flume-line in some places there is slide rock where the flume grade has been dumped from the flume grade as carried along there—in places the bedrock has been exposed by that rock dumped down.

(Testimony of B. D. Stuart.)

Q. Where did you find bedrock on the bank of the creek?

A. I think I found bedrock right along the bank of the creek.

Q. I would like to have that point as definite as possible.

A. I think there is bedrock all along here in the bed of the creek up on the bank—there are boulders lying along there that were dumped over in the process of the construction of that flume.

Q. And if there is bedrock there it is probably covered up?

A. In places it is covered up and in places it is exposed—above the flume it is exposed quite extensively.

Q. Before this mucking out or dumping was done there, did you make any examination to find out where the bedrock was? [919] A. No I did not.

Q. I wish you would indicate between what points on the creek here as near as you can remember you found bedrock, that is, either on the bank or in the bed of the creek, and distinguish one from the other when you make your markings.

A. I don't know that I could say exactly on this map the points I saw it. This whole hillside is exposed on the northwest side of the creek, I would say, from a point opposite that—marked "cabin"—up to say the intersection of the green lines near the word "Oregon."

Q. Near the letter "O" in the word "Oregon"?

A. Yes, sir. The bedrock is exposed there and

(Testimony of B. D. Stuart.)

the strike of it and dip and everything seems to correspond with what it is on the south side of the creek, as I determined it, and I consequently infer that the bedrock continues there on the same strike and dip.

Q. Then, you would also infer somewhat that the bedrock extended through from where you have marked "bedrock" in the Borean Pit up on to Snow-slide Gulch? A. Yes, I would.

Q. At just what depth, you don't know, from the surface? A. I don't know; no.

Q. It depends on the depth of the slide?

A. Entirely. I would like to explain one matter. Of course, the formation striking as it does to the northeast as you descend at a steep slope, it throws a point in the creek bottom which would correspond to a point up on the bank further up the creek, so that a point which would be exactly in line here with this line, unless it were at the same elevation above the creek would not be in the same [920] line on account of the dip the formation has.

Q. When did you first examine this ground you have just been testifying concerning for bedrock?

A. First examined it to find out whether there was bedrock there?

Q. Yes.

A. The first time I really paid any attention to the formation up there was two weeks ago yesterday—I believe that was the time.

Q. I have forgotten what you said this morning that that part of exhibit 21 that is covered with

(Testimony of B. D. Stuart.)

snow, in which the spade is sticking in—what is that did you say?

A. That snow is in an open cut, partially filling an open cut—the sides of the cut are shown by this rock in the shape of a wall on either side.

Q. Is that in any way connected with the Borean pit? A. It is—it is in the Borean pit.

Q. On exhibit 7, tell about where that snow appears and that spade is sticking in, in this photograph.

A. The open cut which the photograph shows is shown on exhibit 7 by this black line.

Q. Near what?

A. It is just above “o” in the word “Borean.” The point where the shovel is stuck is approximately where the lead pencil mark appears in the cut which is marked “hole.”

Q. You didn’t do any excavating up there yourself on yesterday?

A. I excavated a little bit with my pick.

Q. You didn’t clean out this open cut?

A. No, it had already been cleaned out before I got there.

Q. Had the dirt been put back in or had they left the dirt out? [921]

A. No; someone had cleaned out the bottom of the pit and dug a hole about 14 inches deep in the bottom of it. That is where I described that you could see down between the cracks, through the cracks between the boulders and see the slide material down there.

(Testimony of B. D. Stuart.)

Q. How big a crack did you look through the rocks to see that?

A. It was a crack probably two inches wide.

Q. How about the lower part of that Borean pit or cut, the lower part you have marked bedrock—had that lately been cleaned off?

A. Yes, it had; it had been dug out and quite a little embankment thrown out on the side.

Q. How deep was it there when you looked through that crevice down to the bottom where you say you saw this slide?

A. From the bottom of the hole?

Q. From the top of the hole as you looked down?

A. It was a foot and a half or more—which would make it about three feet below the bottom of the open cut as it originally was.

Q. Did you mark on this map here where you took these samples? A. I did; yes, sir.

Q. You indicated you took some samples up at Snowslide Gulch? A. Yes, sir.

Q. Where you marked “bedrock”?

A. One sample was taken there.

Q. And you took some samples at each one of these points marked bedrock in the mouth of the Borean pit or portion of the tunnel or open cut that leads up? A. Yes, sir.

Q. Did you get any down at the creek?

A. No, I don't believe I marked that. I will mark it for you— [922] it was just above the flume, practically at that point which I have marked

(Testimony of B. D. Stuart.)

“bedrock,” and you can get it by means of the arrow on exhibit 7.

Q. You don't know what discovery was relied upon in the location of the Datson Oregon claim, of your own knowledge? A. No.

Q. Nor you don't know what discovery was relied upon in the Canyon Claim, of your own knowledge?

A. No.

Q. You had nothing to do with the location of those claims? A. I was not here at that time.

Q. What experience have you had in testifying upon the witness-stand before?

A. The only other time I was on the stand was in a case for damages in a water suit, in which the consideration was about \$70.

Q. You are somewhat of an amateur?

A. I am very much of an amateur; yes, sir.

Q. What actual experience in mining have you had—that was extended over the time you were with what company?

A. The Federal—and when I was with the Geological Survey—nearly all the time, that is the last three years in which I was with the Geological Survey, we were in mining districts and did more or less in the study of geology and mines.

Q. Your work has been largely, though, surveying, that is mining surveying, has it not?

A. Yes, sir, largely,—when I was with the Federal Company I made considerable study of the mines and geology of the [923] mines, made geological maps of mining properties and examined outside

(Testimony of B. D. Stuart.)

properties for them, with a view to purchasing properties.

Judge WINN.—That is all.

(By Mr. HELLENTHAL.)

* * * * *

Q. Are you acquainted with the *discover* points on the Oregon claim?

A. Not from my personal knowledge; no, I am not.

Q. Have they been pointed out to you?

A. Yes, sir, they have been pointed out to me.

Witness excused. [924]

[Testimony of O. M. Harry, for Defendant.]

O. M. HARRY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. What is your name? A. O. M. Harry.

Q. Your residence? A. Douglass.

Q. Were you employed by the Alaska-Juneau Gold Mining Company in the summer of 1910?

A. Yes, sir.

Q. What time were you employed?

A. From August first to New Year's day.

Q. Just state to the Court what you did pursuant to that employment—where did you go?

A. Why, Mr. Kinzie called me into the office and told me that one of the men there—

Objected to.

Q. Where were you employed to go?

(Testimony of O. M. Harry.)

A. To the Alaska-Juneau Mining Co. up here.

Q. Are you acquainted with the ground in controversy in this suit, being the ground known as the Oregon claim? A. Yes, sir.

Q. And the flume-line as now constructed by the Alaska-Juneau Gold Mining Co.? A. Yes, sir.

Q. Just state what you did when you went up there—what did you find there first?

A. I went up on August first and looked the claim all over as much as I could that day, to see if there had been any assessment work done on it and I didn't find any; then I came down to the present location of the cabin cleaned off [925] some brush there in case I sent some one up there to start the work, so they would know where to start the cabin and started a short piece of trail up the creek. That was on August first. August third I went back to the present location of the cabin and up the creek, cut some steps up the bank, towards where the present location of the flume is, with a view to getting around up to where the dam now is located, and I started up along that bank and it was too hard for me to get around that way, and I went up on top of the hill over the road and went around south of the present dam-site and cut a piece of trail where the dam is now. I went up and put in some boards in there to change the water, to wash the gravel off, as I was told to clean out everything there and get everything ready to start the dam at a point lower down, and I went down and cleaned out tree-tops and boards and some rocks and threw them into the creek.

(Testimony of O. M. Harry.)

Q. At what point?

A. At about where the dam is now, and I got through that day and started to come down the flume-line to come to Juneau, and I saw a hole in the bank on the south side of the creek that looked like a tunnel, and I went over and examined that. While I was examining the claim on the first, this being down right under the cliff I did not see it, but on the third I saw this hole and went over and went into it.

Q. Now, describe to the Court the appearance of that tunnel with reference to age and marks.

A. It was grown with grass and weeds and bushes and moss and didn't look like there had been anything done in it for some time. [926]

Q. Have you been around the woods a good deal?

A. Yes, sir.

Q. Engaged in lumbering?

A. Well, I have been around the woods all my life—logging and various occupations.

Q. State what age, from the appearance and ground around there, that tunnel would indicate.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial and no foundation laid for it.

Objection overruled. Plaintiff allowed an exception.

A. Well, a fresh cut will show, as anybody who has ever cut a green limb with an ax knows. You can take it a year afterwards and there is a growth starts to come over it and a year later on or two years the end of the limb would practically be half grown

(Testimony of O. M. Harry.)

over, so anybody could see whether it was more than a year or two old.

Q. What age did this appear to have since work had been done on it?

A. I don't think by the looks of the tunnel there had been anything done in the inside for a couple of years.

Q. Did anyone go up there with you and show you where the Oregon claim was?

A. Yes; there was a man went up there with me.

Q. Who went up? A. I don't recall his name.

Judge WINN.—We object to anything about the Oregon claim for the reason that it has been admitted that this claim was abandoned and forfeited.

By the COURT.—If they are contending you had no discovery on the Parish #2, it would have some bearing on the status [927] of the ground, whether it was open to their last location or not. Objection overruled. Plaintiff allowed an exception.

A. It was one of the men that works in the office over there. I can't just recall his name.

Q. Describe what he did.

A. He took me up to the Jualpa dam.

Q. It was Mr. Summers, wasn't it?

A. Yes, it was Mr. Summers. He took me up to the Jualpa dam and showed me the corner across from my cabin and about where the corner was up there.

Q. He pointed out the general directions of the claim? A. The general outlines of the claim.

(Testimony of O. M. Harry.)

Q. How long was it before you got your cabin built?

A. I started to build the cabin on the 5th or 6th—started to take lumber down on the 5th, and I think we were seven and one-half days building the cabin. It was about the 12th or 14th when we got the cabin done.

Q. Did you find the Alaska-Juneau Company's water notice up the creek above the present intake?

A. Yes, sir.

Q. Now, go ahead and describe to the Court what work you did further on the claim.

A. Well, a portion of every day I was engaged in cutting trails so the men could go up on to the flume and built a trail up along the creek, put a board across so they could get up around to the dam, and I cut steps in different places along there so they could get up on the flume grade and brush out along same on the bank there where the present site of the flume grade is. I was engaged off and on at that from that on until I left there. [928]

Q. Just explain to the Court the character of the ground between the portal of the Alaska-Juneau tunnel near Snowslide Gulch and the intake, the character and contour of the ground.

A. You have reference to the tunnel where they started to do the first assessment work—that short tunnel above my cabin?

Q. Yes; there are two tunnels there and they are practically in the same place—one is above the other.

A. That is not on Snowslide Gulch?

(Testimony of O. M. Harry.)

Q. It is quite a distance up?

A. Well, just above the two tunnels there, there is a dump with tailings from this pit you people were talking about, the Borean pit, and from that tailings on up to the dam, why, it is almost a straight up and down cliff of slide rock, and just above the tailings, along the rim of the canyon, as you call it, that is all slide rock, but above my house there is this solid rock and after you get over the rim, it is a gravel-bed from there up on the bench back until you start to raise up to the top of the mountain.

Q. Explain the direction and character of the trails that you cut out from your cabin up the creek.

A. After building my cabin I went up the creek a little ways and then I cut these steps to the present line of the flume grade in different places, and then along here at the bottom of this dump, as we call it, from this pit, it was so steep you couldn't walk along there, and I leveled off the rocks so the men could come up and down there to the present dam-site—put a board across there.

Q. Where did you put the board across?

A. About here (indicating), and then I cleaned that trail out [929] on this side of the dam and then above my cabin here I started a trail up over that, because the men couldn't walk along, it was so steep, until they had blasted out there, and I put a trail up over the hill about here, where this sluiceway is here, up over the hill and around like that, and connected with the end of this little short piece of trail I had cut down here; and then there is a

(Testimony of O. M. Harry.)

trail comes up this way to Snowslide Gulch, and I put a ladder across there and cut a trail so the men could go up around and come up this way if they wanted to; that makes three trails besides those steps, and I brushed out along the bank here, along the present grade of the flume-line and around this way—brushed out as far as the cliff. (The witness has been referring to exhibit 7.)

Q. While you were doing this work up there were you interfered with at any time? A. No, sir.

Q. When was it you left this portion of Gold Creek?

A. About October first—somewhere along there.

Q. Did you see anybody doing any work on the property while you were down there, that is, any of the California & Nevada Copper Company people?

A. I think, if I remember right, that about that time—that was the time, I think, if I remember right—that they started to dig in the side of the bank above the present dam-site.

Q. About the time you left there?

A. Yes, and there was surveyors around there occasionally and on that line that crossed right there, that black line that crossed the present dam-site also below my cabin along the creek.

Q. They commenced to work up there shortly before you left? [930] A. Yes, sir.

Q. Have you any way of placing the date approximately when you first saw anybody in this tunnel you have described a moment ago—the lower tunnel?

A. It was some time between the middle of Sep-

(Testimony of O. M. Harry.)

tember and first of October—I couldn't just place the date now. I did have all those notes but they were burned up in a fire over at Douglas recently.

Q. Before that time, outside of the surveying parties, had you seen anyone doing any work on the ground south of the dam on the creek? I don't mean south, exactly, but down the creek from the present dam-site.

A. No, not on the side my house is on; over on the flume side, on the Jualpa flume, I think, if I remember right, they were tearing up part of the flume there.

Q. That is high up on the hill? A. Yes.

Q. On the very bank of the creek?

A. Yes, sir.

Q. That is on the flume grade of the California & Nevada Company? A. Yes, sir.

Q. Are you referring to the new grade of the California & Nevada Copper Company?

A. That is the flume across from my house, the old flume. I saw these other people working on the old flume. They were tearing it up.

Judge WINN.—He means the Jualpa high line flume.

The WITNESS.—Yes, sir.

Q. When did you get men up there to help you?

A. I got men there on the 6th—I had one man there on the 5th.

Q. Month? A. 5th of August. [931]

Q. That was in building the house?

A. That was in carrying the lumber down ready

(Testimony of O. M. Harry.)

for the house on the 5th and we started the house on the 6th.

Q. Tell the Court about the crews that came up there after that time.

A. And shortly after we had the house done there was a couple of Finlanders came up there and took a contract of putting in that upper tunnel, and from that on there was more men added from time to time until I left there.

Q. When you left there what was the state of the grade with reference to completion?

A. The flume grade was nearly completed.

Q. That is, how far up?

A. From the tunnel up to the dam, I think it was just about all done, with the exceptions of a little blasting below the dam.

Q. Some rock work?

A. Yes, some rock work.

Q. I will call your attention to the cliff there. You had not been able to do anything on the cliff where it is precipitous until the grade had been completed from the lower end of the dam?

A. Well, I could not, because I couldn't get around there, handy.

Q. It wasn't practicable for anybody to walk along there? I am speaking of the gang.

A. It wasn't practicable for anybody to walk along there unless they could grade it out or blast it out, so they could get along there on the cliff.

Q. Was there any sign of habitation on the ground below the present dam site when you went up there?

(Testimony of O. M. Harry.)

A. No, sir. [932]

Q. Where anybody could live? A. No.

Q. Or occupy the claim 24 hours in the day?

A. No, sir.

Q. Was there a blacksmith-shop or a structure at the mouth of the tunnel that you have been speaking of when you went up there?

A. Not when I went up there. There was later on.

Q. Any sign of one? A. No.

Cross-examination.

(By Judge WINN.)

Q. You went up there about the first of August, 1910. Had there been any lumber delivered on the ground to complete your cabin at that time?

A. No.

Q. How long after the first did your lumber come up?

A. The lumber started to come up on the 5th.

Q. And then you got the house built? At what date was it completed?

A. About the 12th or 14th of August.

Q. During that time had you done any work on the trail? A. Yes.

Q. How many days had you put on the trail?

A. I couldn't just state how many days. Sometimes I would have to work there a while and then go down and look after the men.

Q. You looked after the men and getting the lumber up there too? A. Part of the time; yes.

Q. After these men had completed the house there

(Testimony of O. M. Harry.)

wasn't anyone assisting you in any work until some time about the 11th [933] or 12th of September?

A. Oh, yes; it was only a short time after we had the house done up there until this Finlander came up there and took that contract.

Q. If Mr. Kinzie said that they didn't commence work there until the 11th or 12th of September, how about that?

A. That is as near as my recollection is—he may be right. They came up there, I know, and were at the portal of that tunnel shortly after we had the house built—sometime between the time I had the house built and the first of September, that is my recollection, if my recollection is right.

Q. You are sure it wasn't as late as the 11th or 12th of September before they came up there and went to work?

A. They might not have started active operations in the tunnel possibly until that time, but they were up there before.

Q. Had they done any work before the 11th or 12th of September?

A. Borrowed my shovel and pick one day and went up there and dug around to see a good place to start in.

Q. You don't remember that date?

A. No, not the exact day.

Q. Did they continue the work after that day they borrowed your pick?

A. No, they were away a few days but they came back.

(Testimony of O. M. Harry.)

Q. When they came back they went to work and stayed there regularly?

A. Yes, they stayed down town a few days and came then and put a tent outside my cabin and built a little blacksmith-shop to keep their tools.

Q. That is one of the tunnels they commenced, to put the flume through, to carry the water down?
[934]

A. That is what I understand it was for—to carry the water through that point.

Q. Is that the lower tunnel they commenced to work on—you afterwards built another one?

A. It was the upper one.

Q. Now, you don't remember just what date, then, any other men came up there to go to work on the trail, do you?

A. There was never any men worked on the trails around there except myself.

Q. These other men, then, that came up to work, besides those that were running the tunnel—what did they go up there for?

A. They dropped up there one or two at a time, at different dates.

Q. What were they working on?

A. On the flume grade.

Q. Are you certain that you left this cabin and went to live somewhere else on the first day of October?

A. I don't think it would be later than the third, anyway.

Q. You were up there on the third day of October

(Testimony of O. M. Harry.)

when the blasting went on, about there where the dam is?

A. I was backwards and forwards between my cabin and my tent there.

Q. Then you were living in the cabin as late as the third or fourth of October?

A. Possibly I was.

Q. You didn't have the grade completed clear up where that dam was completed on the third or fourth of October? A. All except the rock work.

Q. If Mr. Kinzie testified that there wasn't any grade done within 300 feet down the creek from where your present flume is on the third day of October when that bombardment took [935] place, do you think he is mistaken or you are mistaken?

A. All the dirt you could remove with a pick and shovel from the portal of that tunnel up to where you get to the solid rock of the cliff was done, and I don't think there was 300 feet left. It may have been that much but I don't think so. Mr. Kinzie has probably been over there and measured it while I walked on the other side and looked at it after they started to work there—that is the only difference, in judgment, that I know of.

Q. It is very difficult to get around on the hill to do a great deal of this work? A. It was for me.

Q. You have an artificial limb, have you not?

A. Yes, sir.

Q. And it makes it difficult for you to get around?

A. Yes, sir.

(Testimony of O. M. Harry.)

Q. You say when you first went up there you went up to some place and put in some little sluice-boxes like to divert the water from the creek to wash off some gravel or something? A. Yes.

Q. You are sure you put those sluice-boxes in about where the present dam is of the Alaska-Juneau Company? A. No, just above there.

Q. Do you remember seeing Mulligan's water notice stuck up? A. I do.

Q. Where was your sluice-boxes, as you call them, put in reference to where Mulligan's water notice was stuck? A. About the same place.

Q. Following the meanders of the creek that was fully 100 or [936] 150 feet up the creek from where the present dam is?

A. Take the circle of the creek, it would be but straight across; I don't think it would be quite that far.

Q. It was on account of the contemplation of Mr. Kinzie's people taking the water out at this place where you first put the sluice-boxes in that that first high tunnel was run down there, wasn't it?

A. They had not decided at that time definitely where they were going to put in the dam.

Q. They changed the grade of that flume line, did they not, while you were there?

A. I think they did—yes, I know they did.

Q. Then, these two tunnels were run on account of the change in the grade that was made?

A. Yes, I suppose that's it.

Q. After you left up there, left the cabin, on Oc-

(Testimony of O. M. Harry.)

tober first, where did you go?

A. I went up above the Alaska Ebner mill—just by the Ebner mill.

Q. It was you that went up there under the instructions of Mr. Kennedy and put a tent across the right of way of the flume line of Mr. Mackey's people?

A. Yes, sir.

Q. You were doing up there just as you were directed by Mr. Kinzie—he was the man you looked to to direct you?

A. I had three or four people that I took orders from up there, or five or six.

Q. Who were the rest besides Kinzie?

A. Mr. Kennedy, Burch and this gentleman that was just on the stand. [937]

Q. Mr. Stuart?

A. Mr. Stuart, Mr. Kennedy, Mr. Scotty Bruce.

Q. And Mr. Jones up there, the assistant superintendent of the Alaska-Juneau, did he give you orders?

A. Yes.

(By Mr. SHACKLEFORD.)

Q. This incident that Judge Winn is talking about, your putting a tent along the trough in which they were building a flume up above the Ebner mill—you were sent up there to take possession of a claim located by the company, were you not?

Objected to as leading.

By the COURT.—I understand you claimed a placer claim there—I think that has been shown—you each had platted claims there.

Mr. SHACKLEFORD.—Yes, sir.

Witness excused.

**[Recital Re Testimony of Mr. Stewart, for Defendant
(Recalled).]**

(Mr. Stewart recalled—testimony entirely regarding Lotta.) [938]

**[Testimony of Grover Winn, for Defendant
(Recalled).]**

GROVER WINN, recalled as a witness in behalf of the defendant, testified as follows:

(By Mr. SHACKLEFORD.)

Q. You are the United States Commissioner for the Juneau recording precinct? A. I am.

Q. Have you made search in your records for an affidavit of labor for the year 1909 on the Parish Number 2 lode claim? A. I have.

Q. Have you found any?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial whether there is one there or not.

Objection overruled. Plaintiff allowed an exception.

A. No, sir; I find no record of any proof of labor on the Parish #2.

Witness excused.

[Testimony of R. G. Whalen, for Defendant.]

R. G. WHALEN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your business, trade, occupation or profession? A. Surveyor.

(Testimony of R. G. Whalen.)

Q. Where are you employed?

A. The Alaska-Treadwell Gold Mining Company at Treadwell.

Q. Do you know Mr. Stewart? A. I do.

Q. Are you familiar with the plat offered in evidence here as exhibit No. 7? A. Yes, sir. [939]

Q. You heard the testimony of Mr. Stewart in regard to the matters and things delineated on that plat?

A. Yes, sir.

Q. What, if anything, did you do in the way of checking up Mr. Stewart's work in locating the creek as delineated on Exhibit Number 7?

A. I was with Mr. Stewart when he located the creek from a point a little above the Alaska-Juneau cabin up to the bottom of the falls just below the Ebner mill.

Q. And you checked up the survey along that entire line?

A. I have gone over the survey, yes, and the notes.

Q. Are Mr. Stewart's notes in that regard correct or otherwise?

A. As far as I know, as far as I can tell, they are correct—there are no errors apparent.

Q. Is the creek as delineated on exhibit 7 accurately delineated with reference to the way it lies on the ground? A. It is to the best of my knowledge.

* * * * *

Q. Were you with Mr. Stewart when he surveyed across the canyon at a point immediately above the Alaska-Juneau dam?

A. I was with him when he located that point.

(Testimony of R. G. Whalen.)

Q. What is the width of that canyon at that point, the water level?

A. The width of the canyon at that point at the water level is about 25 feet.

Q. How wide is the canyon when you get up to the first bench?

A. What do you mean by the first bench?

Q. The first level place you get on the bank—how far is it across from rim to rim?

A. In the bottom of the canyon just at the water level? I [940] should say it was just about 35 or 40 feet.

Q. How wide is the canyon from rim to rim measured at the elevation you reach when you get to the first level spot of the first bench?

A. About 150 feet.

Q. How high is that above the water level?

A. About 60 feet, I should say.

Q. Between that point and the bottom of the creek, what is the condition of the banks?

A. The banks on the southeast side are rocky and precipitous and on the other side it is more or less rock, but the bedrock is not very deep right in the bank—under the brow it is rough in places.

Q. How does that point in the canyon compare with the balance of the canyon through which the creek flows?

A. Between the falls and the Alaska-Juneau dam, between a point opposite the Ebner mill and the Alaska-Juneau dam—the canyon is not quite so high at the Alaska-Juneau dam as it is above, but it is

(Testimony of R. G. Whalen.)

about as steep.

Q. The width of the canyon is approximately the same?

A. As the canyon is deeper above the width would be greater at the top. The width at the bottom of the canyon through which the creek flows varies. In some places the creek would be at this stage about 8 feet wide and other places about 20 feet wide,—some places 25, perhaps.

Q. I am speaking, now, of the width of the canyon at the water level—I am speaking of that portion of the canyon through which the creek might change its course from side to side and from bank to bank. How wide is the canyon at different portions along the creek—that is, that part of the creek I have indicated?
[941]

A. Twenty to thirty-five feet.

Q. Were you with Mr. Stewart when he located the points indicated on the Colorado to which he testified?

A. I was not. I was with him when he located Corner #4 by triangulation from the road but not when he located the corner up on the hillside.

Q. You don't know about the other corner?

A. No.

Q. Did you make exhibit "11"?

A. I made the greater part of it; yes, sir.

Q. I will ask you regarding the correctness of that exhibit.

A. That is simply a general map to show the plan of the workings and is not intended to be absolutely

(Testimony of R. G. Whalen.)

correct in all its details because it is on such a small scale.

Q. I now call your attention to an exhibit offered in evidence, the plat attached to the complaint in Case #823-A, and ask you if you also made that plat. I hand you exhibit "II" and ask you if you made that plat. A. Yes, sir.

Q. Is the creek correctly delineated on that map?

A. It is not.

Judge WINN.—If the object of this is to impeach their own witness, we object to it.

Objection overruled. Plaintiff allowed an exception.

Q. Is the creek correctly sketched into that map?

A. It is not exactly correct; no, sir.

Q. Is the creek sketched in there from measurements made upon the ground by you?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. It is not. [942]

Q. Where did you get the data from which you sketched the creek in?

A. In this exhibit the creek is sketched, traced from an old plat that was on file in our office.

Q. You don't know anything about its correctness or incorrectness except to the extent it compares with exhibits 11, 6 and 7? A. I do not.

Q. You were up to the Borean pit this morning?

A. I was.

Q. Do you know the difference between bedrock and slide? A. I do.

(Testimony of R. G. Whalen.)

Q. Do you do the geological work for the Alaska-Juneau Company? A. I do; I do the mapping.

Q. The underground work?

A. The mapping and the underground work, keeping the maps up to date.

Q. How long have you done that?

A. I have done it off and on. I have done it for about two years.

Q. Have you had any instruction in geology and mineralogy?

A. I have had the instruction that was given in the ordinary line of engineering.

Q. Are you a graduate in mining engineering?

A. Yes, sir.

Q. What school?

A. University of Washington.

Q. Did you make an examination of the Borean pit? A. I did.

Q. And the open cut shown in the pit?

A. I did. [943]

Q. What did you find there in the way of open diggings in the Borean pit?

A. It appears to be a large placer wash and on the south side, on the southeast side of that pit, there is apparently a trench or open cut dug in the wash. The boulders are piled up in the wall alongside of this to keep it from caving in apparently and in the bottom of that.

Q. Did you find any evidence there of recent excavations?

A. There was a hole I saw this morning that has

(Testimony of R. G. Whalen.)

been dug since I was there last time.

Q. What, in your opinion, is the condition of the surface of that ground as to being in place or not?

A. In my opinion that is slide rock.

Q. How deep is the slide rock?

A. From the condition of the ground there and from the out-crops further down I should judge it would be about twenty feet deep there.

Q. Did you examine the bedrock where it shows in Snowslide Gulch and on the creek? A. I did.

Q. How does the character of the bedrock at those points compare with the pieces of rock that protruded from the surface in the neighborhood of the Borean pit?

A. It is entirely different from the boulders in the pit in the vicinity of this slide, with the exception of a few small pieces of loose rock that are somewhat similar.

Q. I am speaking of the boulders that project from the surface and are apparently in a slide condition.

A. It is entirely different from them. [944]

Cross-examination.

(By Judge WINN.)

* * * * * * * *

Q. How long have you been in the service of the Alaska-Treadwell Gold Mining Company?

A. Since 1906.

Q. You have also done work for the Alaska-Juneau Company, the defendant in this case?

A. Have done a little work last year—in 1910.

* * *

(Testimony of R. G. Whalen.)

Q. You say you went up and examined the Borean pit this morning? A. We did.

Q. Who went with you?

A. Mr. Jones and Mr. Lindsey.

Q. Mr. Jones is the assistant superintendent of the defendant company and Mr. Lindsey is one of the engineers?

A. Mr. Jones is with the Alaska-Juneau and Mr. Lindsey is in my office.

Q. What did you say you examined? Did you go up to the pit, as far as the upper end of it—that is, as far as it extends up on the Parish No. 1?

A. I went in through the bottom and out through the point where the Parish line crosses.

Q. Where the end line of the two Parishes crosses?

A. Yes, sir.

Q. You didn't go up any further?

A. I have been up there.

Q. Where was it with reference to this common end line of the two parish claims at which you saw nothing but slide? A. On that end line.

Q. Then how far did you investigate down along what virtually appeared to be nearly the center of the Parish No. 2 to see [945] how far that slide extended?

A. I have been along the brow of the creek and I have been through the underbrush there.

Q. Can you indicate on this map where it was you first ascertained this morning there was slide?

A. The slide is in the bottom of the Borean pit it-

(Testimony of R. G. Whalen.)

self—the slide starts just above the upper word bedrock.

Q. From the upper word “bedrock” written on this plat, and you say all of that clear up to the common end line of the two Parish claims is slide?

A. Yes, sir, it is slide.

Q. Did you do any excavating there this morning?

A. No, sir; it was not necessary.

Q. It has been cleaned out lately?

A. There has been three pits dug, I think, small pits.

Q. To what depth above the ordinary surface of that open cut or what we have referred to as the Borean pit?

A. I would say that the greatest depth would have been about two feet, the actual depth.

Q. You just then looked upon the Borean pit as you found it and didn’t attempt to move any of the bottom of the pit or the open cut to ascertain anything? A. No, sir.

Q. Now, near the words marked “bedrock,” the parts that were testified to by Mr. Stewart yesterday, you did find bedrock, did you?

A. I believe I did. I think it is correctly shown on that map.

Q. Mr. Stewart was not with you this morning?

A. He was not.

Q. From those points how far did you go on down towards the [946] creek searching for bedrock?

A. I didn’t go down that way this morning.

Q. You know all along near the bank of the creek—

(Testimony of R. G. Whalen.)

well, almost clear across the Parish #2 lode claim—that the bedrock is exposed there?

A. The bedrock is exposed along the flume—I saw that. I thought you meant on the bench.

Q. Below your flume and the creek, what distance is it? A. Forty or fifty feet.

Q. If you found bedrock along your flume, why in all probabilities it extended on down to the creek?

A. Yes, sir.

Q. Did you ever go over Snowslide Gulch approximately at the point that Stewart indicated on this map he found bedrock? Have you ever been there, on Snowslide Gulch? A. Yes, sir.

Q. The bedrock that you found there on that part of Snowslide Gulch is just about in line with the bedrock discoveries from Gold Creek, on up through the discoveries you made in the Borean pit, clear on up Snowslide Gulch, about in line?

A. I think if you draw a line through those points and marked bedrock in the Borean Pit, it would hit bedrock in both the other places, at a good many points.

Q. When you made your affidavit resisting the application for a restraining order in Case #803-A of this court, you measured from this Corner No. 5 of the Idaho the way you have already testified about on up to the stake where the Mulligan notice was posted?

A. Yes, sir.

Q. And then, you said that that notice as posted was 78 feet below the lower side line of the Lotta?
[947]

(Testimony of R. G. Whalen.)

A. Yes, sir.

Q. That Mulligan notice was posted up the creek about how far from where your present dam is?

A. About 150 feet, approximately.

Q. Then, according to your affidavit, you located the Lotta at that time as being 150 feet plus 78 feet up the creek from where your dam is put in?

A. Yes. I can indicate on that chart if you wish.

Q. Your company, then, or the defendant company, was contemplating putting in a dam up where Mulligan's notice was at that time, wasn't it?

A. I don't know.

Q. What time was it that you went up there to make that measurement, do you know?

A. Relatively I know it. It was about a day before the trial started on the first injunction suit, maybe two days. I don't know.

Q. Your affidavit is dated the first of September. Now, when did you go up there with relation to the time you signed the affidavit, do you remember?

A. About two days before that.

Q. Then that would be the latter part of August—that is, the 28th or 29th of August? A. Yes, sir.

Q. Did you see any work that had been done up there where the Mulligan notice was, looking toward the diversion of water from Gold Creek?

A. I saw the troughs.

Q. There were some troughs in there?

A. Yes, sir.

Q. At that time you had not undertaken to build a dam down [948] where it is now constructed?

(Testimony of R. G. Whalen.)

A. I didn't undertake to build any dam at all.

Q. You went up the creek—did you see anything in there looking like a dam where the dam is now constructed?

A. I didn't notice it there. I was simply running a line up the creek. I didn't look.

* * * * *

Witness excused.

[Testimony of W. H. Case, for Defendant.]

W. H. CASE, called and sworn as a witness for the defendant.

(By Mr. SHACKLEFORD.)

Q. You are a photographer in Juneau?

A. Yes, sir.

Q. Referring to pictures marked 12, 13, 14, 15 and 16, I will ask you to examine same and state who took those pictures.

A. I have examined these—these are pictures I made.

Q. At whose request were they taken?

A. Mr. Kinzie's.

Q. About what times?

A. I couldn't give you the dates.

Q. Mr. Kinzie accompanied you at the time they were taken? A. Yes, sir.

Q. To refresh your recollection, I will ask you if they were not taken somewhere about the time of these arrests?

A. Yes; it was about the time of the first trouble.

Q. They are correct representations of the things

(Testimony of W. H. Case.)

shown thereon? A. Yes, sir.

Q. And they are taken in the vicinity of the Alaska-Juneau flume and the Ebner property on Gold Creek? A. Yes, sir.

Witness excused. [949]

[Testimony of Lloyd Winter, for Defendant.]

LLOYD WINTER, called as a witness for the defense:

(By Mr. SHACKLEFORD.)

Q. You are a photographer and member of the firm of Winter & Pond? A. Yes, sir.

Q. And your business is in Juneau, Alaska?

A. Yes, sir.

Q. How long have you lived here?

A. I came here in the spring of '93.

Q. I will ask you if you are acquainted with the general features of Gold Creek canyon below the Ebner mill or falls of Gold Creek?

A. In a general way.

Q. Do you remember a cavity, probably twice the size of one of those desks, that looks like an old boulder, an excavation about the shape of a boulder, in the falls below the Ebner mill? Or by the falls?

A. I think so.

Q. How long has that been there?

A. I couldn't tell you.

Q. Has it been visible there during the time you have been here? A. Yes, sir.

Q. Ordinarily visible,—at all ordinary stages of the creek? A. I don't want to say that.

(Testimony of Lloyd Winter.)

Q. You have seen it generally during the summer months?

A. It has been my business to go up there several times during the year since I have been here.

Q. It is a spot that is noticeable as you go up there?

A. Quite noticeable; yes. [950]

Q. Was it there when you first came here?

A. It was.

Q. I hand you a picture marked Defendant's Exhibit 41 and ask you what it is.

A. A photograph made by myself in the summer of 1894, possibly 1893.

Q. Marked Coulter mill?

A. Coulter's quartz-mill, near Juneau, Alaska.

Q. I call your attention to a place there where you have marked an arrow and ask you to explain to the Court what that is.

A. It identifies the cavity in the cliff of rocks, abreast of the waterfall.

Q. And that is a correct representation, taken at the time mentioned by you?

A. Just as it was when this photograph was made.

Q. Do you know what time of the year that photograph was taken?

A. It was during the summer months.

(The photograph—exhibit 41—is admitted in evidence.)

(By Judge WINN.)

Q. What is that point he called your attention to—a rock? A. No, a cavity—looks like a tunnel.

Q. Is it a tunnel?

(Testimony of Lloyd Winter.)

A. I don't know what they call it.

Q. You can't tell from looking at the photograph what caused that dark spot where the arrow is?

A. It is a cavity.

Q. Did you take this picture? A. Yes, sir.

Q. In what year? [951]

A. Either in the summer of 1893 or 4.

Q. You don't remember whether it was a tunnel there or what it was—whether it was the workings of a mine or anything of that kind?

A. It has the resemblance to a tunnel; it is a sort of cavity there, and it may be done by hand or washed by the water—I can't say.

Witness excused.

**[Testimony of R. G. Whalen, for Defendant
(Recalled—Further Cross-examination).]**

Mr. WHALEN, recalled for further cross-examination:

(By Judge WINN.)

In the affidavit you made resisting the application for a temporary restraining order in 803-A, you also state in that: Affiant further says that they and each of them are well acquainted with the ground embraced in the Oregon and Wyoming lode mining claims as the same are delineated upon the plat attached to the defendant's answer—the plat you mean is Plaintiff's Exhibit "II"? A. I think so.

Q. Up to that time, had you ever surveyed either the Wyoming or the Oregon, or did you simply state that you made a drawing of that from another draw-

(Testimony of R. G. Whalen.)

ing in your office that showed the location of it on the map?

A. I stated I was familiar with the ground in that vicinity.

Q. You stated you were acquainted with the ground embraced within the Oregon and Wyoming lode claims? A. Yes, sir.

Q. Had you ever gone over the Oregon and Wyoming lode claims prior to that or did you just gain your information from [952] what you gained in the office?

A. I gained the information from the location of the claims on the ground from the material we had in the office.

Q. Up to those lawsuits being brought, you had never been over what was claimed to be the Wyoming or Oregon lode claims?

A. I had never been all over them; no. I had seen the ground and was familiar with it.

Q. You hadn't made any examination for the stakes or made any survey to see where the boundary lines were on the ground? A. No, sir.

(The original affidavit of Mr. Whalen and others in 803-A is admitted in evidence as plaintiff's Exhibit "LL.")

Q. Up to the time of the hearing in that case or the commencement of those lawsuits, and prior to, say, the middle of July, 1910, you had never had any occasion to go upon the ground that is termed the Oregon or Wyoming claim, had you?

A. Not in the way of duty, no. I had been there

(Testimony of R. G. Whalen.)

on a trip, that is all; not in the line of doing any work.

Q. When did you make a trip to the Wyoming and Oregon lode claims, say, prior to July, 1910, prior to Datson making his location of the Oregon?

A. I think I had been there a year or so before that—not on any work at all. I have a habit of making trips around on Sundays.

Q. You had not been there on any business connected with either the Oregon or Wyoming claims?

A. No, sir.

Q. You did testify that you have been in the service of the Treadwell Company for two years?

A. Since 1906.

Witness excused. [953]

[Testimony of W. R. Lindsey, for Defendant.]

W. R. LINDSEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. You live in Treadwell? A. Yes, sir.

Q. What is your occupation? A. Surveyor.

Q. How long have you been in this mining district as a surveyor?

A. As a surveyor, two years ago this summer is the first time.

Q. I will ask you if you were doing any work last summer in the vicinity of the Alaska-Juneau flume and dam below the Ebner Mining Company mill on Gold Creek? A. Yes, sir.

Q. Were you employed to go up there, instructed

(Testimony of W. R. Lindsey.)

to go up there and locate a flume grade?

A. I was.

Q. When did you do this?

A. I believe the first survey was made on September 12th for the flume.

Q. You located both ends of the grade?

A. Yes, sir.

Q. Is that the present grade?

A. No; it was about 16 feet, I believe, above the present grade.

Q. That is the height of the original tunnel?

A. Yes, sir.

Q. When did you locate the second grade?

A. I think it was about a week afterwards approximately. I don't know exactly.

Q. I will ask you to state to the Court generally the nature of that ground with reference to the strip of ground occupied [954] by the present flume grade and by the one which was originally contemplated—that is, vertically, the difference.

A. It wouldn't throw the flume more than ten feet either way,—that is, 16 feet vertically would throw it that much.

Q. What portion of the flume which is cut out of the cliff below the Alaska-Juneau Company's present dam—what, if anything, is the situation at that particular point?

A. Well, it is almost perpendicular at most of that place—a very precipitous slope all along.

Q. Some of that cliff is a little more than perpendicular, overhanging? A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. So that with reference to that particular portion of the grade which had to be blasted out, what if any change is there in the location of the flume except as to height?

A. Well, there would be probably no change—a few feet, maybe.

Q. Did you survey the Canyon lode claim on the ground?

A. I made a preliminary survey of it; yes, sir.

Q. For the purpose of locating the corners?

A. Yes, sir.

Q. Just state when that was done.

A. I don't remember the exact date. It was on the date of location.

Q. The same date the location was made?

A. Yes, sir.

Q. You ran the courses and distances and established the corners? A. Yes, sir.

Q. Was the claim staked at that time?

A. Yes, sir. [955]

Q. Do you know where the discovery was on the Canyon claim?

A. Yes, sir, it was approximately 30 feet above the Alaska-Juneau dam.

Q. All of the corners are marked?

A. I couldn't get to all of the corners and I put in witness corners—at two of the corners—but they are all marked on the ground.

Q. All of the corners are marked? A. Yes, sir.

Q. You went up to the Borean pit this morning?

A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. State to the Court what you did up there with reference to locating bedrock and also with reference to locating the rock which appears in the vicinity of the Borean pit there, the large boulders.

Objected to as incompetent, irrelevant and immaterial and no proper foundation laid.

Q. You have taken a course in engineering?

A. Yes, sir.

Q. Mining and engineering?

A. Yes, sir.

Q. What school are you a graduate of?

A. University of Washington.

Q. And how long since you graduated?

A. Two years.

Q. You have been engaged in field work ever since?

A. Yes, sir.

Q. You are one of the regular staff of the Alaska Treadwell Company's office? A. Yes, sir. [956]

Q. Proceed.

A. I started up in company with Whalen and Jones and went up the Alaska-Juneau flume part of the way and found bedrock some place along the creek, and then went over the hill to the pit, and on the way we found some bedrock below the pit a ways—I don't know just how far it was—and went up to the pit and took samples of the rock there and tried to find bedrock, but we couldn't find any indications of it. From there we went on up through the pit and up to the sidehill where we could find bedrock. We found rock that looked the same as the boulder in the pit, we found that way up on the sidehill, and below

(Testimony of W. R. Lindsey.)

that we found bedrock that compared with the bedrock in the pit and also the bedrock in Snowslide Creek, but it is different from the boulders in the pit.

Q. Did you bring a sample of the rock you found up on the sidehill?

A. We brought samples down—Mr. Jones has the samples of the rock.

Cross-examination.

(By Judge WINN.)

Q. Whom did you have a conversation with before you went up there this morning?

A. Whalen and Jones.

Q. Did they state what you were going up there for?

A. We were going up there to see what we could find in the pit and see if we could find any material that compared with those boulders in the pit.

Q. Did *and* Whalen and Jones talk over the matter when you were up there on the ground? [957]

A. We talked over the different kinds of rock we found.

Q. You all agreed upon the same kind?

A. Yes, sir.

Q. You knew that you were going to be called upon here to testify concerning it before you went up there?

A. I thought probably I would; I didn't know.

Q. What experience have you had with mining up on Gold Creek?

A. I have been all over the section. I never done any actual mining, but surveyed over there and ex-

(Testimony of W. R. Lindsey.)

amined the rock in many different places.

Q. You have done surface ground surveying?

A. I have mined some.

Q. On other places on Gold Creek?

A. Not on Gold Creek.

Q. You have never done any mining on Gold Creek or Silver Bow Basin? A. No.

Q. All you have done up there has been surface ground surveying?

A. I have examined the rock in place in a good many different places.

Q. When did you examine the rock in place and for what purpose?

A. Anyone interested in geology would examine it almost any time they were around there, and I have been over that section a good many different times during the last two years.

Q. You were so interested in geology that you went up there and studied the formation up Gold Creek and Snowslide Gulch on how far up?

A. I have been all the way up to the Perseverance mill and above that.

Q. You have gone down the bed of the creek and up on to the properties in dispute before this morning to examine [958] the formation?

A. Yes, sir.

Q. When did you go over there to examine that formation?

A. The first time I was in that section was, I believe, a year ago.

Q. What was your occasion to examine the surface

(Testimony of W. R. Lindsey.)

up there a year ago?

A. It was the time the geologist was up there, the expert, and I had been talking with him for some time and went over to see what it looked like.

Q. What part of Gold Creek did you examine then? A. The section around the Oregon claim.

Q. Did you know the Oregon claim existed at that time, a year ago?

A. Yes; it is a little less than a year ago.

Q. You mean the Datson Oregon claim?

A. I heard of another Oregon claim located before that.

Q. Your location is dated October 8, 1910, that you made the location of the Canyon claim. Did you last year make any other locations for the defendant company up or down Gold Creek from where you located the Canyon claim?

A. I think I made three other locations.

Q. What were they? A. The Bear claims.

Q. Where are they?

A. They are all below the Alaska-Juneau dam, on the same side of the creek.

Q. Below the Alaska-Juneau dam and on the right-hand side of the creek as you go up?

A. Yes, sir. [959]

Q. I will ask you if you did not know at the time you located the Bear lode claims that they were being located for the purpose of obtaining a right of way for the defendant company down Gastineau Channel.

Objected to as not cross-examination—incompetent, irrelevant and immaterial.

(Testimony of W. R. Lindsey.)

Objection sustained. Plaintiff allowed an exception.

Q. I hand you a certified copy of a location notice, offered in evidence in this case by the defendant company, which refers to the canyon lode claim. Is that the location notice you claim you took up the Canyon lode claim under? A. Yes, sir.

Q. I wish you would come over here to this exhibit and trace out with this ruler about where you intended that the exterior boundary lines of that claim *should*? A. It is shown by those red lines.

Q. You didn't get the end lines parallel, did you?

A. Part of the end lines were parallel, they were run out with a compass and chain. It is a bad country in there.

Q. When you say you made a preliminary survey to locate that claim, you don't mean that you made an accurate survey of it?

A. Not very accurate; no.

Q. You didn't have a transit?

A. I had a compass and chain. I didn't have a transit.

Q. You considered the compass was good enough to locate the claim by? A. Yes, sir.

Q. What work had been done in and about the Lotta claim prior to the time you made this location to ascertain where the boundary lines of the Lotta claim were?

A. I was with Whalen when he ran the first line up Gold Creek [960] as he testified to.

Q. You signed that affidavit with Whalen, didn't

(Testimony of W. R. Lindsey.)

you? A. Yes, sir.

Q. The same affidavit I was questioning Whalen about this morning,—your name is attached to it?

A. Yes, sir.

Q. You are the same Lindsay mentioned in that?

A. Yes, sir.

Q. In order to ascertain where the Lotta claim was prior to your making the location of the Canyon claim, you had done nothing except to run this traverse line from Corner #5 of the Idaho up just as described by Whalen? A. Yes, sir.

Q. You heard Whalen state that the water location notice of Mulligan was about 150 feet up Gold Creek from your present dam and then the location notice was 78 feet below the lower side line of the Lotta,—you heard that? A. Yes, sir.

Q. You helped him ascertain those facts in running that line up there? A. Yes, sir.

Q. In this location notice you say—beginning at the notice situated on the left bank of Gold Creek, about 50 feet up the stream from the lower Alaska-Juneau dam—that line that you located about 50 feet up was the lode line of your location of the Canyon claim, was it not? A. Yes, sir.

Q. Then, you took 300 feet above there and according to that located the lower side line of the Lotta claim 300 feet above your lode line, did you not?

A. I did not; no, sir. [961]

* * * * *

Q. You meant by your notice that the Lotta claim

(Testimony of W. R. Lindsey.)

bounded your claim on the northeasterly side line, did you not?

A. I meant that the Lotta lode, as far as I could tell, lay very close to the side line. I didn't know exactly where it was. * * *

Q. You stated in that affidavit you made in 803—that you were well acquainted with the ground in the Wyoming and the Oregon lode claims. What Oregon claim did you have reference to when you made that affidavit—did you have reference to the Corbus location or the Datson location?

A. I believe they both cover practically the same ground.

Q. At the time you made that affidavit did you know that Datson had made a location of a claim that he called the Oregon? A. Yes, sir.

Q. Do you know which one of those Oregon claims you refer to—you call it the Oregon claim?

A. That is all I called it.

Q. Do you refer to the Datson or the Corbus location?

A. It didn't make any difference as long as it is the same ground—it is the Oregon claim.

Q. Before we got into these lawsuits, had you had anything to do with the Oregon claim and the Wyoming claim? A. No, sir.

Q. You didn't know there was any such claim in existence prior to that time? A. No, sir.

Q. Then, all you know about the Oregon claim and the Wyoming claim when you refer to them in your affidavit is from some knowledge you gained out of

(Testimony of W. R. Lindsey.)

the office of the [962] Alaska-Treadwell Gold Mining Company?

A. I knew where the stake of the Idaho was and I knew from the surveys where all these claims should lay.

Q. You did not know until this litigation came up that the defendant company ever claimed to own any such a mining claim on Gold Creek as the Oregon and Wyoming?

A. I may have known it. I don't know when I first learned of the Oregon and Wyoming. They have been on record there over in the office for some time.

Q. How often have you ever been called upon to examine a mining claim to ascertain anything about bedrock and especially any mining claim on Gold Creek? I will confine it to Gold Creek entirely.

A. I have examined a good many different kinds of rock on Gold Creek.

Q. I mean to ascertain in regard to any particular mining claim as to how deep it was down to bedrock, etc. How often have you been called upon to examine into a matter of that kind on anything on Gold Creek? That is the first time, is it not?

A. In connection with the Canyon and Oregon, I went over all these and examined them.

Q. You made a discovery on the Canyon claim, did you, at a distance of about 50 feet above the dam. What was the nature of your discovery there?

A. There were stringers of quartz with mineral in it.

(Testimony of W. R. Lindsey.)

Q. Did you locate it according to the strike of the country there? A. Yes, approximately.

Q. As near as you could? A. Yes, sir. [963]

Q. And you found rock in place there?

A. Yes, sir.

Q. It is not any trouble to find rock in place anywhere down Gold Creek from where you made your discovery clear down across—well, for six or seven hundred feet? A. No, sir.

Q. Now, that is a fact—for several hundred feet down the creek from the dam, you can go along Gold Creek and just up about the flume, between the flume-line of the defendant company and the creek, you can find bedrock and rock in place?

A. Yes, sir.

Q. What place did you make an examination first in the Borean pit to ascertain where the bedrock was? Refer to the exhibit there.

A. We examined the bedrock all the way up this direction and found bedrock on the flume and somewhere up in here and all the way through the pit.

Q. Did you go clear up to the head of the pit?

A. Yes, we went out of the pit at the head.

Q. And where in that pit do you claim that the slide commenced in the bedrock?

A. The last place the bedrock is exposed is down here some place. Above that it is all slide rock.

Q. You didn't do any excavating up there this morning? A. No, sir.

Q. You just went up to examine things as they stood there on the ground? A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. You say you went out of the Borean pit and went up above it there on the Parish #1 claim?

A. Yes. [964]

Q. Did you find any bedrock up there?

A. We found bedrock up on the hill some place. I don't know how far up it was.

Q. Approximately, how far up from the Borean pit?

A. Approximately, I should say nine hundred or a thousand feet.

Q. You went up that high this morning?

A. Yes, sir.

Q. How is the strike of the bedrock you found up on the hill there compared with that you found down on the Parish #2? A. Approximately parallel.

Q. Did you go over near Snowslide Gulch—in Snowslide Gulch? A. Yes, sir.

Q. About what point on this exhibit No. 71 did you go over to Snowslide Gulch this morning?

A. Some place in here, I should say.

Q. Some place about where the word "Gulch" is written on the Colorado claim, as indicated on this exhibit 71—did you go any other place on Snowslide Gulch?

A. We came down across here and came down Snowslide Gulch and down this way.

Q. And what did you find in Snowslide Gulch about where that word "Gulch" is—find any bedrock there?

A. We found bedrock in one place; yes, sir.

Q. How is the strike of that with the bedrock you

(Testimony of W. R. Lindsey.)

found below there?

A. It is approximately parallel to it.

Q. Did you go down to Gold Creek?

A. Yes, sir.

Q. Did you go down to Gold Creek this morning to see if you could find any rock in place, bedrock, down between your [965] flume—the defendant company's flume and the creek?

A. I see the bedrock in place a good many places when I was there before.

Q. The bedrock, now, that you speak of that you found at those places, do you mean it was mineralized rock?

A. In places it assayed a little bit and in some places it did not.

Q. Do you remember just where those places were?

A. No, I don't remember. Up on the hill, I remember.

Q. It shows it is mineralized?

A. It shows it is mineralized; yes, sir.

Q. How about Snowslide Gulch?

A. I don't believe I found any there.

Q. You made no test about the mineralization of it except an examination of the rock?

A. That is all; yes, sir.

Witness excused. [966]

[Testimony of George C. Jones, for Defendant.]

GEORGE C. JONES, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. Where do you make your headquarters?

A. At the present time up at the Alaska-Juneau mine.

Q. You are in charge of that property on the ground? A. I am foreman.

Q. And have been for how long?

A. The last year.

Q. You were in charge of that property last year when the dispute arose between the parties on Gold Creek between the Snowslide Gulch and the Ebner Mill? A. I was.

Q. I will ask you to state if you have made any examination of the Borean pit and the surrounding country for the purpose of determining the character of the large rock found on the edge of that pit or in the pit and their probable original source?

Judge WINN.—We object to that. No foundation laid, and it is incompetent, irrelevant and immaterial.

By the COURT.—How long have you been engaged in the mining business?

A. About four years.

Objection overruled. Plaintiff allowed an exception.

Q. We went over the ground this morning and from all the evidence we could get—

(Testimony of George C. Jones.)

Judge WINN.—We object to that.

Q. You have taken a mining course?

A. Yes, sir.

Q. A graduate of what school?

A. University of California. [967]

Q. How long have you been out of school?

A. Four years.

Q. Have you been in active work of mining ever since? A. Ever since; yes, sir.

Q. Before you state your conclusions, tell what you did.

A. We went along the flume, from where the old dump from the Borean pit comes over. We followed that approximately and went right into the mouth of this open pit or wash, or whatever it is, and found some bedrock—the same as the rock around there.

Q. The same as the rock developed by the cut in the creek?

A. Yes. We found that just about where it is indicated here, where bedrock is written.

Q. What is the character of that rock?

A. It is a schist.

Q. Describe to the Court the prominent rock, if any, you found in the Borean pit.

A. From where we found this bedrock we walk up, I should say, about 70 feet—60 or 70 feet—to where we found the big boulders, what appeared to be diorite. In most places it was a big boulder and the rest was small boulders; they are much shattered and it is massive, save you couldn't tell anything

(Testimony of George C. Jones.)

about any strike or dip to it.

Q. Did it bear any resemblance whatever to the schist exposed in the bed of the creek?

A. Not at all.

Q. Did you ever find any other kind of rock of any massive size or of unbroken loose character than that in the pit?

A. No, we found all sorts of broken rock in the pit.

Q. I am speaking of rock of any size? [968]

A. Some two or three pieces, some greenstone—nothing to amount to anything. From there we went up to the top of this excavation, examined all the rock we could find there, all the exposed rock, all apparently mixed up, had some greenstone, some of this decomposed *metagabbro* and decomposed diorite.

Q. What is the character of that ground after you cross the lower rim of the pit, from there up to the end of the pit and within a radius of 50 feet from the border,—what is the character of that ground?

A. It is a mixture of a little bit of everything.

Q. I don't mean the character of the rock, but the character of the ground with reference to its being rock in place.

A. It is loose rock, as far as we could see.

Q. Tell us what you did with reference to the ground further up the hill.

A. From there we went right to the bottom of the cliff—it is probably 900 feet from the cliff—and we took a sample of the rock up there, which we found to be just the same as these boulders as far as we

(Testimony of George C. Jones.)

could tell—this diorite and *metagabbro*, and also up there just on the snow line we found some more of this schist, this green schist, chloritic schist.

Q. That is before you strike the cliffs with this massive rock?

A. Yes, but there was so much snow around there we couldn't really find the contact, where it apparently intersected.

Q. Tell the Court where you took the samples from.

A. We took one sample just where it is exposed at the flume.

Q. I mean samples on the sidehill, 900 feet up?

A. There was one sample we took of the *metagabbro* and we took [969] one sample of this schist.

Q. The sample you took of the *metagabbro*, state its situation with reference to being in place.

A. It is directly above the Borean pit, as they call it—we went straight up there,—snowslides had to come down that way.

Q. You took it out of the cliff?

A. We took it right out of the cliff.

Q. Have you that with you?

A. Yes, sir; we have several of them. Mr. Lindsey had two or three.

Q. This is a sample of the rock you got out of the cliff? A. Yes, sir.

It is offered in evidence and admitted as Defendant's Exhibit 42.

(Testimony of George C. Jones.)

Afternoon Session.

Q. Did you take any observations in the vicinity of the Borean pit to ascertain the depth of that slide matter on the hillside as near as you could estimate it from the position of that boulder?

A. I should judge it was between 50 and 100 feet, just where the boulder is.

Q. It sticks up that high from the lowest point in the pit?

A. No; that is the depth of the slide where the lower part of the bolder is exposed.

Q. Did you take any samples of bedrock in the vicinity of Gold Creek?

A. Yes, sir; that piece was taken just above the flume.

Q. This piece was taken just above the Alaska-Juneau flume?

A. Just above the flume, near the place where the tailings from the Borean pit are found. [970]

The rock is admitted as Defendant's Exhibit 43.

Q. Did you take any samples of bedrock anywhere else?

A. Yes; we took one sample of bedrock exposed at the lower end of the pit where the flume used to be.

Q. At the floor of the rim of the pit? A. Yes.

(The rock is admitted as Defendant's Exhibit 44.)

Q. Did you take samples of bedrock anywhere else?

A. Yes; I took samples of the dump of that tunnel which is approximately 300 feet above the Borean pit, to the left of the pit.

(Testimony of George C. Jones.)

Q. The dump of the tunnel?

A. Yes, there is a tunnel. I believe it is on the Royal claim.

Q. Have you a sample of that? A. I have.

Q. Does that correspond with the general character of the rock all around that tunnel?

A. It does.

(The rock is admitted as exhibit 45.)

Q. Did you take any other samples?

A. Yes; the next sample, Number 4, was taken to the right, just a little bit below the Borean pit, just on that point on the other side of Snowslide,—on the left-hand side of Snowslide and on the right-hand side of the Borean pit.

Q. On the drainage of Snowslide Creek?

A. Yes, as low down as we could get it in the snow.

Q. That corresponds to the general character of the rock in that vicinity that is in place?

A. Yes, sir. (The rock is admitted as exhibit 46.)

Q. Did you take any other sample? [971]

A. Yes; that is taken right at the foot of the cliff at practically the snow line there.

Q. That is, it is taken from the foot of the cliff from which you took the first sample of metagabbro?

A. Yes, sir.

Q. This corresponds with the general character of the rock beneath the cliff?

A. It corresponds to the rest of this schist around there, the bedrock.

Q. How far is this from the cliff which you described as about 900 feet north of the Borean pit?

(Testimony of George C. Jones.)

A. It is just at the foot of that.

(The rock is admitted as exhibit 47.)

Q. Did you take a sample off the big boulder too?

A. Yes, sir—here it is.

By the COURT.—That is the big boulder in the pit?

A. Yes, sir.

Q. To the left of the pit as you look up the hill?

A. Yes, sir.

(The rock is admitted as exhibit 48.)

Q. Now, from the cliff on down to Gold Creek where bedrock is exposed by the action of the creek, I understand you to say that the country is generally covered with slide matter?

A. Yes, close to the top, there is a lot of snow there; we couldn't see, after probably 150 feet,—there is snow there.

Q. From the snow on down? A. Yes.

Q. You are acquainted with the rock formation in this mineral belt from your experience?

A. I am; yes.

Q. The direction you took from the Borean pit up the hill, [972] what is the direction of the compass, what is the direction of that?

A. I should say it was northeast by east—we would call it northeast.

Cross-examination.

(By Judge WINN.)

Q. How long do you say you have been in the mining business in Alaska? A. A year and a half.

Q. When were you called upon to go up and ex-

(Testimony of George C. Jones.)

amine this formation so you could give this testimony? A. I was told to go last year.

Q. When did you make your examination?

A. This morning.

Q. By whom were you sent up there?

A. Mr. Kinzie.

Q. Did he tell you what he wanted you to do?

A. He did.

Q. You went up there and did what he told you to do? A. I did.

Q. Have you ever read Mr. Spencer's report, the Spencer that belonged to the United States Geological Survey, of what is called the Juneau gold belt?

A. I have.

Q. Did you ever read Mr. Wright's report also, which was made later on, some years after Spencer's?

A. I think I have. I am not certain, though.

Q. I will ask you if you have read those reports sufficiently to testify to the court as to what particular mineral-bearing formations in this Juneau gold belt and especially including the Perseverance, Alaska-Juneau and the Ebner property—as to what sort of rock in place is the mineral-bearing [973] rock?

A. I would go on my own experience—his write-up on the Alaska-Juneau was very meagre.

Q. Have you read both Spencer's and Wright's reports?

A. I am certain I read Spencer's—I don't know whether it was Wright's report, the other I read, or not.

(Testimony of George C. Jones.)

Q. Do you remember whether or not Wright's report corroborates that of Spencer?

A. The reports I read did corroborate him.

Q. If you have read those and taken in connection with your experience that you have had in mining in the Juneau gold belt including the Ebner property, the Alaska-Perseverance and in the Alaska-Juneau, I would ask you what sort of rock in place and what sort of a formation is it they describe there as being the mineral-bearing rock, both Spencer and Wright?

A. I have never been in the Perseverance but from what I have read, that strip of country in there, the mineral is found in the black slate.

Q. Altogether? A. I believe so.

Q. What do Spencer and Wright say in regard to whether that is true or not—do you know?

A. I think that is their idea of it, too—at least, that is where I got my information in regard to the Perseverance because I have never been there.

Q. I will ask you if this is not the fact that in Spencer's report, which is also corroborated by Wright's, they state as follows: That in the portion of the Alaska gold belt or Juneau gold belt which is drained by Gold Creek that Mr. Spencer has recognized four bands, geologically, distinct [974] one from the other, etc. I understand in these reports of Mr. Spencer and Mr. Wright that they only say there is one kind of rock that is the mineral-bearing rock in this Juneau gold belt. Which class of rock or rocks as described by Spencer do these rocks you have offered in evidence in this case belong?

(Testimony of George C. Jones.)

A. The rock from the boulder I should describe as the same as he calls the diurite or which later on has been called the metagabbro.

Q. He states the diurite is a mineralized rock?

A. He does.

Q. Is there mineral in it?

A. I don't think there is at the Perseverance. I don't know.

Q. I am referring, now, particularly to the Ebner property and the Alaska-Juneau, which are more contiguous properties than the Perseverance?

A. That is mineral bearing in the Alaska-Juneau.

Q. And in the Ebner?

A. I think so; in the Ebner.

Q. Now, when you examined what you term a boulder and what all these experts have termed a boulder on behalf of the defendant company in this case, did you see any stratification in that rock of these seams, mineral bearing and mineralized seams that Spencer refers to here?

A. I saw two quartz seams in that boulder.

Q. You didn't bring a piece of the rock down here that showed those two quartz seams?

A. I did not.

Q. Did you compare those quartz seams with the quartz seams further up the hill in Snowslide Gulch to see comparatively [975] which way those seams dipped? A. I did.

Q. How do they dip?

A. They dip towards the north.

Q. They both dip in what you term the boulder

(Testimony of George C. Jones.)

and what you see in Snowslide Gulch—they dip in the same way, don't they? A. Very nearly.

Q. If that is a slide rock or a boulder that has come down off of that hill and altered in that pit, why would those seams and stratifications of that same mineral be dipping very nearly the same as they are in that rock in place out there in Snowslide Gulch—can you explain that?

A. In that case, I should imagine it is just a coincidence.

Q. Do you know the size of that piece of rock you term slide rock or boulder?

A. You couldn't see the absolute size of it.

Q. And you didn't take any pains to go there and make any excavations to find out the size of it?

A. No; we didn't dig down at all.

Q. Neither you nor any of the experts that were with you didn't pretend to get any piece of that that purports to be a mineralized strata or seam—you didn't get any of that part and bring it here?

A. I brought a specimen of the diorite itself.

Q. This specimen that you bring here, is that what is termed in this report of the Juneau gold belt as being one kind of rock *that a* mineral-bearing rock?

A. It is.

Q. You don't want to testify to the Court but what the piece of rock that you took off what you term a boulder is a mineralized [976] piece of rock?

A. I can't say whether that is mineralized or not.

Q. What did you bring it here for?

A. I brought it here to see if it was the same rock

(Testimony of George C. Jones.)

as exposed above.

Q. Is it the same as exposed above?

A. Apparently.

Q. If it is the same as exposed above, would that lead you to believe it was a piece of slide—could there not be a stratification along there, mineral-bearing, that would run up the hill of the same kind as this? A. I should say not.

Q. You have no idea of the size of that piece of rock that you call a boulder?

A. I have a very good idea.

Q. How do you get that idea—from what?

A. From the general shape of it and the way it is lying—from what you can see.

Q. How much of it can you see?

A. There is probably eight or nine feet of it exposed there, and you can see there is loose rock lying underneath it. There are small fragments of this greenstone or schist, whatever they call it, and there is also some broken fragments underneath it.

Q. Couldn't that have been broken off from the regular formation in the excavating and working of that pit? A. It might have been.

Q. If Mr. Kinzie testified that that rock was a very large one, probably as big as this house, this courthouse, I think he made some comparison—I don't know what comparison it was—

The COURT.—He said there was a flat rock there twice as big as this room. [977]

Q. If that is true you want the Court to understand that where you examined those quartz seams,

(Testimony of George C. Jones.)

when they have the same dip that the country that is bared still further on up at Snowslide Gulch has, that it is a mere coincidence—that that piece of rock down there just came off of that big hillside for a half or three-quarters of a mile, rolled down and stopped in that place, stopped with that stratification and with the same dip etc. it has further on up the country there? A. I do.

Q. When you looked under this, what you said was a big boulder, how far underneath that rock could you see that you call a boulder that has this seam in it of quartz?

A. You can see three or four feet; that is as far as you could see.

Q. Does it project out into this wide part of the Borean pit indicated on exhibit 7?

A. It is practically on the side of the pit.

Q. In excavating there or washing out this pit, did that expose any part of the rock or was that rock exposed there before this excavation was made?

A. The side of it was exposed. I imagine you could probably have seen some of the top of it before.

Q. And you saw underneath that some schist or what is described by Mr. Spencer as being a mineralized rock, did you?

A. He doesn't describe the schist as a mineralized rock at all.

Q. What did you find along in there?

A. We found some of this broken diorite, as Mr. Spencer describes it, and little bits of granite, what looked like granite and little bits of this greenstone.

(Testimony of George C. Jones.)

Q. Have you read Mr. Spencer's bulletin Number 225, pertaining to this Juneau gold belt, do you remember?

A. I don't know whether I have read it or not.

Q. I will ask you if it is your opinion that these seams that you saw there, both in the pit and out of the pit, are mineralized, these quartz seams?

A. I should imagine they were.

Q. When you went down further towards the creek you brought some samples in here of what you said was the general formation there. I will hand you the whole bunch of exhibits that Mr. Shackelford identified and will ask you to state to the Court if there is any part of that rock mineral-bearing rock.

A. I should say those two were.

Q. Where did you get those two?

A. One from the boulder and one from the top of the hill.

Q. What do you say about this slate?

A. I should say there was nothing in that.

Q. That is some of the slate formation, schist or slate, and that is what Spencer says is one of the mineral-bearing rocks of the property?

A. Not that schist.

Q. What is the difference between schist and slate?

A. A great deal of difference. The slate has a very prominent cross fracture and the slate existing up here is very much darker in color.

Q. You have been up over the Perseverance Company's mines? A. No, sir.

Q. You have been just across the gully there and

(Testimony of George C. Jones.)

worked in the property of this defendant company for several years?

A. I have not worked up there for several years.
[979]

Q. You know that the slate in this Juneau gold belt is considered about the heaviest mineralized, mineral-bearing rock that is found in it?

A. Some of it—the seams in the slate.

Q. Spencer says that this slate is mineral-bearing rock, don't he, this entire gold belt from Wyndham Bay to Berner's Bay?

A. I believe he says the quartz stringers in this slate.

Q. The same slate that comes from the Alaska-Perseverance Company—some of the slate that comes from the Alaska-Perseverance and those other mines that are mineral bearing rock, the quartz stringers are so fine that you can't see them with the eye?

A. There are some very fine stringers, but my experience is that those very stringers don't carry any value.

Q. This rock that you have offered in evidence in this case is rock that has long been exposed to the weather? A. Yes, some of it is.

Q. That would change the nature of the rock, its long exposure to the weather?

A. It would decompose it to a certain extent.

Q. You didn't take a pick and shovel along and you didn't go down—

A. We didn't dig down any.

(Testimony of George C. Jones.)

Q. You are considerably interested in this case?

A. Yes, sir.

Q. You are the same witness that swore out the warrant for the arrest of Wettrick and others up there last fall on behalf of the defendant company?

A. I am.

Q. What is that long name you called that rock?

A. Metagabbro. [980]

Q. What kind of rock is that? Is that the rock called diorite here by the geologist?

A. I believe so.

Q. What part of this rock that you have introduced in evidence here belongs to that class?

A. The one from the boulder and the one from the top of the hill and one from the cliff.

Q. Why do you call that a boulder?

A. Because I consider it so.

Q. Why do you consider it so?

A. Because I find all around it. I find everywhere where bedrock is exposed. I find it is all this schist and this other stuff is lying on top of it. I sampled all around.

Q. Did you get around to bedrock under this, what you call slide?

A. No, you can see bedrock down below at the mouth of the pit.

Q. How far from where this rock was you call slide? A. It is approximately 70 feet.

Q. (By the COURT.) Seventy feet from the boulder you speak of? A. Yes, sir.

Q. You just went there and went into the pit and

(Testimony of George C. Jones.)

looked at the boulder and looked down at the bottom, and then you walked on down below a piece before you found anything exposed that looked like bed-rock, and that is the examination you made there?

A. Looked at everything there was to look at that would give any indication as to what it was.

Q. Around this rock that you call slide rock in the pit there, could you tell whether there had been any water come in there and wash in and deposit anything on the bottom of the pit? [981]

A. Whether there had been water coming from above? I shouldn't think so—there might be a little but not any amount.

Q. Do you know whether or not that pit was in the same condition it was when Ebner claimed he made a discovery up there or around there some years ago?

A. I do not; no.

Q. And you don't pretend to say that you saw as far down in that pit as Ebner did when he was working up there and claimed what he found as mineral-bearing rock in place? If it is filled in there, six years since that work has been done and it is not left in the same condition, then you didn't see it in the same condition that Ebner saw it?

A. Certainly not.

Q. You could see, I believe, underneath that rock two or three feet where it had been washed out?

A. Something like that.

Q. You didn't go any further back to see what was under there—you didn't pick any more and go back under it? A. No.

(Testimony of George C. Jones.)

Q. You don't pretend to tell the Court what is back underneath that rock?

A. No, sir, I don't. I didn't try to.

(By Mr. SHACKLEFORD.)

Q. I will hand you a book here and ask you to examine it. It is entitled the Juneau gold belt of Alaska by Arthur C. Spencer and ask you if that is the report to which you refer as having read—the number of it is 287?

A. I think I have read this one. I won't swear to it, but I think so; it looks very much like it.

(The report is identified as Exhibit 49.) [982]

Q. I understand from your cross-examination that the chists introduced in evidence here, being the three samples of bedrock, except the samples taken from the boulder inside the Borean pit and the samples taken from the pit, are not the slates in which the quartz seams of value are found in the Juneau gold belt? A. They are not.

Q. Describe to the Court the slate bands, which are known as the stringer carrying bands of the Juneau gold belt as distinguished from that rock.

A. Well, the slates of the Alaska-Juneau are very dark in color; they have a decided cross-fracture and very finely stratified; they contain quartz stringers which cut probably at an angle of 15 or 20° from the general strike of the slates themselves.

Q. Now, with reference to this greenstone that has been introduced here, I want you to tell the Court is there a stratification of the greenstone? I refer to Exhibit 48. A. No.

(Testimony of George C. Jones.)

Q. There is no such stratification to the stringers in the greenstone? A. No.

Q. And in that boulder referred to there is no stratification? A. No.

Q. Judge Winn has asked you a question as to what Mr. Ebner might have seen in the bottom of the Borean pit before it was washed out. If Mr. Ebner testified that his discovery was made on those high rocks that are still visible to the eye at the edge of the Borean pit, what have you to say whether that is on rock in place or not? [983]

A. I should say that the rock was not in place.
(By Judge WINN.)

Q. Here is a piece of rock identified by Mr. Stewart yesterday—exhibit 31. Do you know where that rock came from?

A. It came from that schist band somewhere.

Q. That is schist you hold in your hand?

A. That is what I call it.

Q. Is that a mineralized piece of rock?

A. I don't think so.

Q. It is your opinion that #31, as identified by Mr. Stewart, is not a mineralized rock?

A. I couldn't say. I wouldn't think it was by looking at it, although there is a little quartz present.

Q. Isn't that a piece of the same kind of slate described up there, with stratifications in it, etc.?

A. That is not slate at all—I wouldn't call it.

Q. You wouldn't call that slate?

A. I would not.

Q. Here is one identified by Stewart—#32. What

(Testimony of George C. Jones.)

do you think of that piece of rock?

A. I would say it is very much the same rock.

Q. Do you think that is mineralized?

A. I shouldn't think so.

Q. Where did that come from—#34?

A. That is what is described as the diorite or the metagabbro.

Q. And which is described as being mineral-bearing rock? A. I think so.

Q. What is this—36?

A. That looks like a piece of granite.

Q. Now, 40—where do you think that came from?
[984]

A. That is diorite—described as diorite.

Q. What is that? A. That is schist again.

Q. This schist is found commonly in this Juneau gold belt on the Ebner property and the Perseverance and over on your property?

A. I have seen a great deal of it.

Q. In what respect does the boulder, so far as stratification is concerned, differ from that same sort of rock that you see out there in Snowslide Gulch—that has a seam in it similar to the seam you saw in this slide rock so-called?

A. There was no stratification; it is not stratified.

Q. Neither one of them?

A. That is the diorite I am referring to.

Q. What about the rock that carries this seam in it in Snowslide Gulch compared with the rock you saw in the pit, so far as stratification is concerned? I am talking about what you call the slide in the

(Testimony of George C. Jones.)

pit, the boulder?

A. The rock in this schist is very well stratified—it is very plain in that schist.

Q. Both in Snowslide Gulch and in this boulder you saw in the pit?

A. No, there is none in that at all.

Q. That you saw in the pit?

A. None in the boulder or in the outcrop in the pit, as you call it.

Q. But there is a stratification, you say, out in the rock which is beyond in Snowslide Gulch, that has seams in it just the same as this?

A. In the schist, but not on top of the hill—there is none on top of the hill. [985]

Q. I am talking about Snowslide Gulch where you saw some rocks with seams of quartz in them just the same as this rock down in the pit, the boulder?

A. I didn't say that.

Q. What did you say?

A. I said there was a seam of quartz in that boulder in the pit.

Q. And then you saw some out in Snowslide Gulch?

A. I said on top of the hill, 90 feet above—it is not in Snowslide at all.

Q. I understood you to say where you went out in Snowslide Gulch, right along in line with this big rock, that you saw in the pit, the boulder, that you went on out there and found rock that had seams of quartz in it, had the same dip, etc., as it did in this rock in the pit?

(Testimony of George C. Jones.)

A. I said that the dip of that seam of quartz in the boulder was approximately the same as the general dip of the schist.

Q. Have you seen any seams out there in rock in place on Snowslide Gulch, right on that line up from Gold Creek, passing through this bedrock that you discovered, up here where Stewart testified to blasting rock out there in Snowslide Gulch that has seams of quartz in it similar to this rock you call a boulder in the pit?

A. Not on that side of Snowslide Gulch where you are referring to. It was directly above, to the left—directly above.

Q. Above this mark, marked bedrock Snowslide Gulch? A. No, it was way to the left of that.

Q. That is, up above the northeast end line of the Colorado lode? A. Yes, sir. [986]

Q. Didn't I put this question to you a while ago—if you didn't go out in Snowslide Gulch and find some rocks that had seams of quartz in them just the same as was in this rock in the pit, and didn't you say you did?

A. Not in Snowslide Gulch. You can't see in Snowslide Gulch at all now.

Q. If Mr. Stewart went up there the other day and found rock in place in Snowslide Gulch, you can see it?

A. You can see one or two little places along the other side of Snowslide Gulch, on the right-hand side of Snowslide Gulch.

Q. You didn't hear Stewart testify yesterday?

(Testimony of George C. Jones.)

Q. You claim way up at the upper end of the Colorado claim, which is the easterly end of this exhibit, you think this big rock came tumbling downhill. How far is it you found that stratification up there?

A. About 900 or 1000 feet.

Q. Then, I understand that is the place you claim this rock came from, and came right side up with care, with the seam just the same as it is on the hill?

A. I didn't say it had the same seam as the rock up the hill at all.

Q. The same dip, etc.?

A. You find those seams of quartz in that diorite in all sorts of directions.

Q. Didn't you say this rock had the same angle, etc., and you thought it was just a coincidence?

A. As the schist.

Witness excused. [987]

[Testimony of Benjamin Bullard, for Defendant.]

BENJAMIN BULLARD, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. In Juneau.

Q. How long have you resided in Juneau?

A. About ten years.

Q. What has been your business since you have been in Juneau? A. Mining.

Q. How long have you followed the business of mining? A. Forty years or more—45 years.

Q. Where did you mine before you came to

(Testimony of Benjamin Bullard.)

Juneau? A. In California and Oregon.

Q. Since you have been mining in Juneau have you located and appropriated any water? A. I have.

Q. You have had some experience in that line in connection with your mining operations?

A. Yes, sir.

Q. Do you know the customs of miners in the Harris mining district and other mining localities in the vicinity of Juneau and Southeastern Alaska with reference to the appropriation of water and the acquisition of water rights in general?

Judge WINN.—We object as incompetent, irrelevant and immaterial. No custom could change the law on the subject.

Objection overruled. Plaintiff allowed an exception.

Judge WINN.—I also object because it is not the best evidence, and is indefinite and uncertain as to time.

By the COURT.—Make it certain as to time.

Q. Do you know the customs of miners in the Harris mining district [988] and the surrounding districts lying in the Juneau gold belt, in the southeastern part of the district of Alaska, with reference to the appropriation of water and the acquisition of water rights at the present time?

Judge WINN.—We object. No foundation laid for this witness to testify.

Objection overruled. Plaintiff allowed an exception.

A. I do.

(Testimony of Benjamin Bullard.)

Q. Do you know the customs of miners in the localities referred to in the last question with reference to the rights appropriators of water have in connection with the construction of ditches and canals and the appurtenances thereto across such mining claims as may be held, claimed or owned by others?

Judge WINN.—We object as incompetent, irrelevant and immaterial and not the best evidence. He is asking for a custom that would change the rule of law adopted by the Courts pertaining to the acquisition of water, and the question is indefinite and uncertain as to time, and indefinite and uncertain as to what sort of mining he is going to testify the water is to be devoted to and used.

By the COURT.—I presume you are referring to unpatented mining claims?

Mr. HELLENTHAL.—Unpatented; yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. I do.

Q. Do you know what is generally referred to as the law of riparian rights, what is meant by that?

Objected to. Sustained.

Q. Do you know what is meant by the term riparian rights? [989]

Judge WINN.—We object as carrying with it a legal effect and legal conclusion. Sustained.

Q. What, if any, rights has the riparian owner under the customs of miners in this mining locality to the use of the waters flowing in running streams by reason of his ownership of the banks, if any?

(Testimony of Benjamin Bullard.)

Objected to as calling for a conclusion of the witness.

Objection overruled. Plaintiff allowed an exception.

A. He has none.

Q. Under the customs of miners in this district, who can acquire a right to the use of waters in running streams?

Judge WINN.—We object. That is regulated by the United States statute and the decisions and rules of the Court, and is calling for a conclusion of law.

Objection overruled. Plaintiff allowed an exception.

A. Any American citizen, that is, a citizen of the United States, or persons who have declared their intention, I suppose, who have use for water.

Q. How can the right to the use of water *be acquired* in running streams be acquired in the locality to which we are now referring under the customs of miners in the Juneau gold belt and in the locality?

Same objection. Objection overruled. Plaintiff excepts.

A. Well, I should say in two ways. By really and actually appropriating the water, or by posting a notice at the point of diversion, in which notice the amount of water intended to be appropriated should be specified in miners' inches or in other ways; that will determine the amount of water that is to be appropriated and the means by which it is to be appropriated and diverted and the place and purpose for which [990] it is to be used.

(Testimony of Benjamin Bullard.)

Q. What is done with that notice with reference to having it recorded under the customs?

Judge WINN.—I object to that because it is incompetent, irrelevant and immaterial and that the rules and decisions of the Courts have established the rule, as well as the statute, having prescribed that this notice may be recorded and any other rule or custom that the witness may have would not prevail in this matter.

Objection overruled. Plaintiff allowed an exception.

A. After posting at the point of diversion, within a reasonable time, as speedily as possible, it should be recorded in the commissioner's office in which the appropriation is made in the district—the commissioner's office in the district in which the appropriation is made.

Q. Under the customs of miners, as you know them in this locality, what is the effect if a notice is not recorded and the rights of others intervene between the time of posting and recording—that is to say, if the notice is not recorded within a reasonable time?

Objected to as not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. A person who may appropriate by proper notice, etc., if he was more diligent he might acquire such rights. I don't know about that exactly.

Q. The first method of acquiring water rights that you have mentioned is by the actual taking and application of the water without a notice?

(Testimony of Benjamin Bullard.)

A. Yes, sir.

Q. Under that method what has got to be done before the water [991] right lapses under the customs of miners of this district as you know them?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The actual taking must be done and diverted through some ditch and actually dedicated to use, of sluicing or power or hydraulic purpose or some real practical use, and if so done without any interference by anybody else, then his right is established, fully established. And the other way is by posting a notice and recording it and then diligently and as speedily as possible completing the necessary work to carry out the objects specified in the notice.

Q. What must that be followed by? The posting and recording of the notice, what must that be followed by under the custom.

(It is understood all this testimony goes in under the same objection, which is overruled and plaintiff allowed exception.)

A. By the actual construction of the plant or works indicated by the notice and then the continued use of the water, actual use.

Q. Actual application? A. Yes, sir.

Q. Under the customs of miners in this locality, what right has an appropriator of water or one seeking to appropriate water to apply to a beneficial use to build such ditches as may be necessary to carry out his scheme of diversion and appropriation across unpatented mining claims, quartz or placer, in order

(Testimony of Benjamin Bullard.)

to affect his diversion of water and convey the same to its place of intended use?

Same objection. Objection overruled. Plaintiff excepts.

A. Why, the appropriator has the right to cross such claims, [992] quartz or placer, with suitable ditches or flumes to accomplish the result intended by his appropriation.

Q. Does the right which you have referred to include the construction of ditches, flumes and appurtenances such as wing dams and other necessary dams to get the water into the ditch? A. Yes, sir.

Cross-examination.

(By Judge WINN.)

Q. Have you ever done any mining in this country? A. Yes, sir.

Q. Have you ever run and operated a quartz mine?

A. I have not.

Q. Have you ever had any sort of a quartz-mill?

A. No.

Q. You were a placer miner in this country?

A. I have placer mined a little in this country. I have been employed in mills in this country.

Q. You have a contract with the Treadwell people over here now to sell them a certain water right up Gastineau Channel, have you not—that they have paid you part on and owe you part?

A. They do not.

Q. Didn't you sell them a water right some time ago? A. I did.

Q. The deal is all closed? A. Yes, sir.

(Testimony of Benjamin Bullard.)

Q. The payments are all made? A. Yes, sir.

Q. What are you doing now?

A. Well, I am prospecting. [993]

Q. Where are you prospecting?

A. In this neighborhood, this moment I am not doing anything, haven't for a few days. I intend to go out in the hills shortly and have some prospects in view.

Q. Where have you known of anybody building ditches or flumes over other people's quartz mines in this country to conduct water to mills?

A. I don't know that I have any personal knowledge of such a situation.

Q. You don't know of a single one you can mention—you can't mention a single one, can you?

A. I don't think I could.

Q. You can't mention a single instance in this Harris mining district or anywhere in Southeastern Alaska where a man had a quartz mining claim, that anybody just at random could cross over with flumes and ditches and convey the water?

A. I don't know of any particular instance of my own knowledge.

Q. In fact, you do know that whenever they have undertaken to do that, they failed in it—when the party who owned the claim resisted it?

A. I have no personal knowledge of such failure either.

Q. How long have you been here?

A. Then years or more.

Q. Where did you find out these matters you have

(Testimony of Benjamin Bullard.)

testified to—what were some of the decisions or books—you didn't know it from experience, did you?

A. I think I did, from experience.

Q. You say you don't know of a single time that anybody has ever taken water across another man's mining claim in Alaska so you couldn't learn it by experience, could you? [994]

A. I think so—by investigation.

Q. You call that experience, do you?

A. Yes, sir; experience.

Q. You call it experience what somebody else has told you? A. Mostly.

Q. Do you know of any man that you have ever talked with that pointed out any specific instance where a man owned a mining claim—do you know of a single instance in Southeastern Alaska where a resistance was made to another party crossing his mining claim with a water-flume or pipe-line—that a crossing was ever made when he was resisted in it?

A. I have no personal knowledge, I don't think, of any particular instance; no.

Q. Do you remember the instance of the Jualpa high line flume when they went across the Ebner property, and he held them up—do you know the result of that case?

A. I now have a recollection, only by hearsay, of some difficulty there between them.

Q. And you remember that the Jualpa Company paid about ten or fifteen thousand dollars to cross there, don't you?

A. I believe that that was my information, that

(Testimony of Benjamin Bullard.)

they had paid for the right of way for some water right or something. I don't know the details of that instance.

Q. From actual experience in Alaska mining, you couldn't have learned what you have testified concerning? A. I think so.

Q. What do you call experience—what somebody else has told you?

A. I call this experience—that when I came to this neighborhood I began to make a study of this subject, with a view [995] to dedicating water in this neighborhood to use. I began to inquire of all the oldest residents here what the customs were, because I knew that there was no statutory law, and they told me and I followed their instructions, and finally I appropriated water in this country and dedicated it to use, and that is how I have had the experience.

Q. But you don't cross anybody's mining claim with it? A. Never did.

Q. Then, the knowledge you have of some custom that might have prevailed here is all from hearsay, is it not?

A. Mostly—mostly from hearsay. I have observed—

Q. Is it not all from hearsay—you haven't learned anything from practical experience?

A. Well, I have. I have located and aided in the location of another ditch and water right in this country.

Q. Did you cross somebody's mining claim with it? A. I don't think I did.

(Testimony of Benjamin Bullard.)

Judge WINN.—I move to strike out the entire evidence of the witness because he has never crossed anybody's claim and never knew that anybody did cross anybody else's claim, and if he knows anything of anybody crossing a claim it is from what somebody else told him.

Objection overruled. Plaintiff allowed an exception.

Q. Have you ever read any of the decisions of the courts in Alaska pertaining to this question of the rights to the use of water? A. Never have.

Q. Did you attend the trial of the case of Thorn-dyke et al. vs. the Perseverance Co., here?

A. I did not.

Q. You didn't testify in that case?

A. I did not.

Witness excused. [996]

[Testimony of George Hartrader, for Defendant.]

GEORGE HARTRADER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Do you live in Juneau? A. Yes, sir.

Q. How long have you lived in Juneau?

A. Thirty years. I came here the fore part of April, 1881.

Q. Are you the same Hartrader who is known as the constructor and builder of the original Hartrader ditch back in the eighties?

A. The ditch you refer to belonged to the Tiger

(Testimony of George Hartrader.)

Company, but I was a member of the company.

Q. It is frequently spoken of as the Hartrader ditch?

A. The Hartrader ditch or the Coombs & Campbell ditch—we speak of it either way.

Q. What has been your business since living in this district?

A. My business has been principally mining.

Q. Do you know the customs of miners in the Harris mining district—you know where the Harris mining district is situated?

A. I know where it used to be—I don't know whether they have extended the boundaries or not.

Q. The stream known as Gold Creek, you know where that is? A. Yes, sir.

Q. This stream, Gold Creek, from its source to its mouth is entirely within the Harris mining district?

A. Yes, sir.

Q. Do you know the customs of miners in the Harris mining district and surrounding mining districts, that is to say, those districts situated within the Juneau gold belt and Southeastern Alaska, with reference to and governing the [997] appropriation of water and the acquisition of water rights?

(It is understood all this testimony goes in under plaintiff's objection as in testimony of Mr. Bullard. Objection overruled and plaintiff allowed exception.)

Q. Do you know the custom?

A. I do, to a great extent. I wouldn't say I know it all, but I do to a great extent.

Q. Under the custom of miners as you know it, has

(Testimony of George Hartrader.)

the owner of the banks of a running stream any right to the use of the water flowing in the stream without appropriating it and merely because he is the owner of the bank?

A. A man who owns the banks of a stream, he would have a perfect right to use the water in the stream.

Q. How can the right to the use of water in running streams be acquired in the districts to which you have testified, lying about Juneau, in the Juneau gold belt, under the customs of miners?

A. You post a notice at the place where you want to take the water from the creek and state in that notice where you want to carry it to and what purpose you want to use it for.

Q. Then what do you do after you post your notice?

A. You record it within a reasonable time—a good many years ago, I think it was twenty days.

Q. Then what do you do?

A. You go to work and complete your ditch and do your work on it in a diligent manner to complete it.

Q. Then what do you do in the way of applying the water to a beneficial use?

A. Run the water through the ditch and use it for the purpose it was intended to be used for. [998]

Q. What rights under the customs of miners in this locality has one seeking to acquire a water right by diversion and application to a beneficial use to build ditches, flumes, canals, aqueducts and intakes on the mining claims, whether quartz or placer, nec-

(Testimony of George Hartrader.)

essary for him to cross in order to divert the water and apply it to the beneficial use desired?

A. The way we done in the early days in the Basin we crossed over that man's claim with our water ditches and flume.

Q. Here is a map, which we will have marked Defendant's Exhibit 50 (it is so marked)—in a general way, does that correctly represent matters as you know them upon the ground in the locality of Silver Bow Basin? I mean with reference to the location of the creeks, Gold Creek and Icy Gulch, and Icy Creek, etc.

A. I can't say that I understand the map.

Q. In the construction of the Hartrader ditch, was it necessary to cross mining claims owned by others, by other parties? A. Yes, it was.

Q. Who owned the ground—the ditch took the water out of the Lurvey, did it not?

A. Out of what is known as Lurvey creek; yes, sir.

Q. Who owned the ground at the place where you took the water out?

A. I don't remember anyone at that time.

Q. Nobody at that time?

A. That was taken out in 1881.

Q. Do you remember the names of any of the parties that owned the water along the course of the ditch?

A. Our ditch crossed Kelly & Cadmus ground and the Bulger placer ground.

Q. Lower down, did it cross any other claims?

[999]

(Testimony of George Hartrader.)

A. Lower down, after it crossed Icy Gulch.

Q. Your ditch went below Icy Gulch?

A. Yes, down to Quartz Gulch and still on further.

Q. Whose ground did you cross?

A. I couldn't give you the names of more than one company—there was a man named Wyberg and a man named Peterson—we crossed their ground.

Q. Did you ask them for permission or pay them anything? A. No, sir.

Q. Were there any other ditches built in that neighborhood at that time? A. There was.

Q. Any built across mining ground owned by others than those who built the ditches?

A. Coombs & Campbell and myself built almost from Icy Gulch into Quartz Gulch and we crossed the Bulger-Hill Company's ground, and there was other ditches there—I couldn't say whether they cross other people's ground or not. The Bulger-Hill Company had a ditch, but I think it was pretty much on their own ground.

Q. How about the laterals that extended from your main ditch did they cross the ground of others—were there any lateral ditches built from the main ditch?

A. No, sir; not from our ditch, there wasn't.

Q. Under the customs of miners, as you understand them, does it make any difference with reference to the right to build ditches and canals and the like whether the ditches and canals are built across quartz or placer claims?

(Testimony of George Hartrader.)

A. We crossed both placer and quartz claims in building our ditches. [1000]

Q. Was your ditch built across any quartz claim?

A. Yes, sir.

Q. Whose quartz claim did you cross?

A. It crossed one I can mention—that belonged to a man named Mooney and Moore.

Q. Can you think of any others?

A. We crossed another quartz claim. I don't know who it belonged to now.

Q. Did you get any permission to cross those quartz claims or pay any damages or anything of that sort? A. No, sir.

Q. Do you understand the map now?

A. I think I do.

Q. Look at this map marked 50 and indicate whether the ditch there marked as the Coms & Hartrader ditch is about where your ditch was located? Does it look all right on the map, your ditch?

A. You haven't got all the water right in there, all the ditch in there—that is what fooled me; it looks all right.

Cross-examination.

(By Judge WINN.)

Q. When was that you built that ditch in question; how long ago?

A. We located the ditch in 1881, in August, and completed about 600 feet of it and completed the remaining part of it around Quartz Gulch in 1882.

Q. And that water was taken up and the ditch dug for the purpose of applying the water to placer min-

(Testimony of George Hartrader.)

ing? A. Placer mining.

Q. And where you took up the water, you took it up on United States Government land?

A. Yes, sir. [1001]

Q. You said there was nobody owned it?

A. Yes, sir.

Q. Did you post up a notice, do you remember?

A. Yes.

Q. Did you have it recorded?

A. Yes; you will find it on the record books, I think.

Q. What time did you post up your notice with respect to the time you commenced work on your ditch?

A. We commenced work on the ditch shortly after we posted the notice up—dug out about 600 feet from where it jumps off in what is called Jackass Gulch.

Q. You posted your notice up before the other people took up the mining claims your ditch crossed?

A. I couldn't say as to that.

Q. Your right was the oldest—older than any of the rest of them?

A. On that creek, yes, sir; I couldn't say whether the ditch was taken up before those other claims the ditch crossed was taken up or not, or the water right taken up, I mean.

Q. The only thing that water ditches in those times were used for up there was placer mining, wasn't it?

A. Yes, sir.

Q. There wasn't any quartz-mills in and about Juneau? A. No.

(Testimony of George Hartrader.)

Q. These people's ground that your ditch went across, they didn't say anything to you about it, and you didn't say anything to them about it—you just kept on building?

A. Kept on building right through.

Q. And you don't remember of any other ditches that were built up there by people who crossed other people's land with the ditch, do you?

A. No, sir; there wasn't any ditches there of any consequence. [1002]

Q. There wasn't any other ditches in Southeastern Alaska, then, of any consequence?

A. No, I don't think so.

Q. Since that time there has been a lot of quartz-mills built here—the Ebner, the Perseverance, the Treadwell, the Mexican, etc. You don't know anything about any custom that has prevailed with those companies in crossing other lands?

A. No, sir; I do not.

Q. You don't know of a single instance where either the Treadwell or any of those companies crossed anybody else's quartz claims, but what they had to pay for? A. No, I don't know.

Q. That was about the time of the founding of Juneau?

A. Shortly after—it was founded in 180.

Q. And you people had what you called a Miners' Association here then? A. Yes, sir.

Q. And you met and passed your by-laws and rules and regulations in that organization? A. Yes, sir.

Q. There wasn't anything ever said in those by-

(Testimony of George Hartrader.)

laws and regulations about the right to cross anybody's land?

A. I don't think there was. I don't remember of anything like that.

Q. And this case of yours is the only case you know of?

A. Yes, that is the only case I know of.

Q. How many placer mining camps were there in Southeastern Alaska in 1881 when you were doing this work up there?

A. I didn't know of any except this one here outside of Sitka— [1003] there was a little mining going on there.

Q. That was about the only mining that was going on in Southeastern Alaska at that time?

A. Yes, sir.

Q. This town was founded what year—when did the people commence settling here?

A. They commenced settling here in the spring of 1881. It was started in the summer of 1880.

Q. This association you had here then and the miner's rules and regulations, they referred to the kind of mining going on then—and that was placer mining? A. Placer mining. [1004]

[Testimony of Charles Boyle, for Defendant.]

CHARLES BOYLE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you lived in Juneau?

(Testimony of Charles Boyle.)

A. Since 1886.

Q. What business have you followed since living in Juneau? A. Mining.

Q. Do you know where the Harris mining district is situated? A. Yes.

Q. Do you know where Gold Creek is?

A. Yes, sir.

Q. Gold Creek along its entire length is within that district? A. Yes.

Q. Do you know what the custom of miners is in the Harris mining district and other mining districts surrounding the town of Juneau and in the Juneau gold district in Southeastern Alaska with reference to the acquisition of water rights?

(Same objection to this line of testimony is made to that of preceding witness. Objection overruled and exception allowed.) A. Yes, sir.

Q. Now, under the customs of miners in this district, that is to say, the district just referred to, the locality just referred to, surrounding Juneau, can the right to the use of water of the running streams be acquired—what steps must be taken and who can acquire it?

A. You have got to take up a water right and you have a right to it if you want it—you have a right to it, to keep up a water right. [1005]

Q. How do you take it up under the custom of miners? A. You put up a notice and record it.

Q. And then what do you do?

A. You take and dig a ditch or flume or whatever way you can get it in to where you want it introduced.

(Testimony of Charles Boyle.)

Q. What right has anyone trying to get a water right to cross mining claims, either quartz or placer, that lie between the place where he wants to use the water and the creek from which he wants to take it, the place from where he wants to take it, to construct ditches and flumes and other means of diverting and confining the water?

A. The custom has always been to take the water—you could take it across a man's ground. If you couldn't get a ditch you would have to flume it across it.

Q. What right do you have to build dams and turn the water into ditches under the customs of miners on some other man's mining ground, quartz or placer?

A. You would have the right to raise the water to get it into the ditch.

Q. Could the man who owned the ground stop you from doing that, under the custom?

A. Not as I know of. I think it was customary always.

Q. How long has that custom prevailed in the mining localities to which I have referred, that is, the localities surrounding Juneau?

A. All the time, so far as I know.

Q. When you say all the time, how long do you mean—when did you come here? A. In 1886.

Q. Was that the custom then?

A. Yes, sir. [1006]

Q. Is that the custom yet?

A. Yes; it is the custom, as far as I know, yet.

(Testimony of Charles Boyle.)

Q. Is there any difference under the custom whether the claims crossed are quartz or placer?

A. No, placer was what came first. They were worked before there was any quartz, but the right always prevailed since, as far as I know.

Q. To cross quartz or placer either?

A. Yes, sir.

Q. A good many of the claims that in the early days were held as placer claims are now held as quartz claims? A. Yes, sir.

Q. You know where the ditches are that are built in Silver Bow Basin and in the neighborhood of Gold Creek that have been used for mining purpose, in the locality where the Ebner and Alaska-Juneau mills are? A. Yes.

Q. Do you know where the Coombs & Campbell ditch is? A. Yes.

Q. Do you know whether that ditch crosses ground other than that owned by Coombs & Campbell and Hartrader?

A. Yes, several—it crossed the head of the ground owned by Luke Nolan and his partner.

Q. Do you remember anybody else?

A. Pretty near the whole of that, it crossed right along the head of their claims—it crossed pretty near the most of them, all along.

Q. Would you say a large number of claims—how many, about?

A. There must be six or seven claims—they crossed Lynch's ground, too. [1007]

Q. Do you know where Coombs & Campbell have

(Testimony of Charles Boyle.)

another ditch? A. Yes.

Q. Did that cross anybody's ground except Coombs & Campbell's?

A. Yes, it crossed other ground.

Q. Do you know whether any of these mining claims were located before the ditch was built?

A. I think they were located before the ditch was built, most of them.

Q. Do you know of any other ditches that were built in Silver Bow Basin besides the Coombs & Campbell ditches to which you have testified?

A. The upper ditch of Hartrader and Coombs & Campbell. I know the ground was all located before that upper ditch was built.

Q. Whose ground did that ditch cross?

A. It crossed Campbells and Nolan's—Pete McClinchey's, Jimmy Farrell and Luke Nolan.

Q. Can you state whether these claims you have just mentioned were located before the water right ditch that you have last spoken of was located?

A. Yes, it was located before the ditch was there.

Q. What other ditches were built up in Silver Bow Basin that you know of?

A. There were three ditches built there.

Q. Any ditch from Snowslide Gulch?

A. Yes, from Icy Gulch as we call it—that is the one I have been testifying about.

Q. Any ditch over Snowslide Gulch?

A. Yes.

Q. Who built that? [1008]

A. I believe Nick Harris.

(Testimony of Charles Boyle.)

Q. Whose ground did that cross, if anybody's, do you know?

A. I don't know what it crossed now—it didn't cross anybody's ground then. Nobody claimed it then that I know of.

Q. What other ditches were built there that you know of—were there any other ditches from Snowslide up the hill?

A. No, not from Snowslide, except the Harris ditch.

Q. Do you know of any other ditches built there in the early days or since?

A. No; part of that ditch of Coombs was built before—that is abandoned.

Q. Do you know anything about the ditches built on Douglas Island? A. No.

Q. Or Sheep Creek either? A. No.

Cross-examination.

(By Judge WINN.)

Q. You also had some miners' rules and regulations that required in the location of placer claims and lode claims that they have to post up notices and record these notices too—that was a custom, was it not? A. Yes.

Q. You never did know of any man going on another man's mining claim and taking the water off of his mining claim, did you?

A. I know him to take it out of the stream.

Q. If you owned a placer claim up there, did you ever know of a man coming on the claim owned and taking the water out of the creek and taking it away

(Testimony of Charles Boyle.)

from your placer claim?

A. Not up here but I did in other places.

Q. But not in Alaska?

A. Because here the ground is so steep you haven't got to cut very much—you can take the water at any place. [1009]

Q. If you, for instance, owned a placer claim up in the Basin, you wouldn't have allowed any man to take the water off your placer claim down to his placer claim, under the customs?

A. Certainly, if the water was going to waste—

Q. If the water was going to waste, you would let him go on? A. Yes.

Q. And take it off of your claim? A. Yes.

Q. Can you mention any man that ever did that up in the Basin?

A. No; they have no right to get the water in that way; they could take the water from any place, the water was up above them all the time.

Q. You never knew of a man going on to another man's mining claim and taking the water off the mining claim belonging to another man?

A. No; but I know him to fetch it across his claim.

Q. You know when Hartrader located his water right he went up on Government land and located it—you heard his testimony? A. Yes.

Q. And when he went on to Government land and located it, then he took it across some other claims?

A. Yes.

Q. Who owned any quartz claims up there—do you know of anybody in those early days?

(Testimony of Charles Boyle.)

A. Well, Archie Coombs owned quartz claims in early days.

Q. Where is that with relation to any of the property up there now?

A. It is the same claim they are working now.

Q. That he is working?

A. The Alaska-Juneau is working—they own the claim Archie Campbell used to own up there. [1010]

Q. Did he work it as a quartz claim, Archie Campbell? A. Yes.

Q. Whose ditch crossed that claim?

A. The ditch of Hartrader and Coombs crossed it.

Q. Hartrader & Coombs took the water down to work on the placer claims? A. Yes, sir.

Q. What did you say the other ditch is that you knew up there in early days?

A. The first ditch was—there were three or four partners in it—Coombs was in it and Hartrader too.

Q. What creek did they take the water from?

A. The lower ditch was taken out of Icy Gulch.

Q. Where is that gulch up there with respect to the Perseverance or the Alaska-Juneau property?

A. It comes right straight down from the mountain—the Alaska-Juneau runs right up against it.

Q. That is where those people took it?

A. Yes.

Q. They went way up on the hillside and took up the water and then took a ditch around and across some other people's property? A. Yes, sir.

Q. They went on Government land and took up the

(Testimony of Charles Boyle.)

water too—went way up and got it on land nobody owned?

A. Of course, nobody owned it at that time.

Q. Nobody owned it at the time they took the water up? A. No.

Q. Now, what other ditch did you have up there?

A. We had this present ditch that is working now, the Alaska-Juneau [1011] —what they call the upper ditch.

Q. Is that the water that the Alaska-Juneau uses now in their mill? A. Yes, sir.

Q. Who first took up that water right?

A. That water right that belonged to that ditch is the water of the Perseverance Company as owned now. We passed other ditches that were abandoned which ran around the mountains and the bluff there.

Q. That is the ditch that took water out of Lurvey Creek? A. Yes, sir.

Q. The Alaska-Juneau is not using that water out of Lurvey Creek now?

A. No, they are getting water out of Icy Gulch, but in the early days the other two ditches below claimed the water in Icy Gulch,—they took it all.

Q. In early days this ditch also took the water out of Lurvey Creek? A. Yes, sir.

Q. Was that used by the Alaska-Juneau people a while?

A. No, by Cooms and Campbell and Hartrader.

Q. And that water is now used by the Perseverance Company and is called the Lurvey Creek water right?

A. Yes, sir.

(Testimony of Charles Boyle.)

Q. That is the one they had the big lawsuit over between Thorndyke's people and the others?

A. Yes, sir.

Q. Any other ditch? A. That is all.

Q. You never knew of any man that owned a mining claim making [1012] any objection—they just went across without asking for it—didn't say anything about it, just went across the property—do you know whether they had an agreement with the owners of the mining claim or not?

A. The owners were always talked to about it?

Q. They would give their consent to go across it?

A. Yes, that was the custom. We took the water whenever we wanted it.

Q. But they generally got the consent of the owner of the mining claim before they crossed it?

A. Certainly; it is natural enough to do that.

Q. The only thing that you know, then, about the custom is the custom that prevailed there in the early days when there was placer mining going on?

A. Yes, sir.

Q. You don't know how the Treadwell and the Mexican over here acquire their water rights or the Sheep Creek and Dick Lewis with his waterworks in town and Ebner and all those other waterworks—you don't know anything about? A. No.

Q. In those days the only property worked in southeastern Alaska was the property in Silver Bow Basin? A. Yes.

Q. The Treadwell hadn't started? A. No.

Q. Sheep Creek hadn't started? A. No.

(Testimony of Charles Boyle.)

Q. Ebner hadn't? A. No.

Q. Perseverance hadn't? A. No.

Q. Berners Bay hadn't started up? A. No.

Q. None of them? A. No.

(By Mr. HELLENTHAL.)

Q. Under the custom, could the owner of a piece of ground stop [1013] you from building a ditch across the ground?

A. Not as I know of—I don't think he could.

Q. Where is Luke Nolan's ditch—where did that take the water out of Icy Gulch?

A. He never had a ditch. He got water out of these other ditches.

Q. Who had a ditch there besides Hartrader, Coombs & Campbell? A. The Bulger Company.

Q. Across whose ground did that run—where did that take the water out?

A. Out of Icy Gulch.

Q. Where? On whose ground?

A. There was nobody claimed the ground at that time.

Witness excused.

[Testimony of Hugh Tracy, for Defendant.]

HUGH TRACY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Douglas.

Q. How long have you resided there?

A. About 25 years.

Q. When did you come to this country?

(Testimony of Hugh Tracy.)

A. In 1886.

Q. What has been your business ever since?

A. Prospecting and mining.

Q. How long have you been prospecting and mining?

A. More or less every year since I came. [1014]

Q. Do you know the custom of miners governing the acquisition of water rights as that custom obtains in the District of Alaska? I am speaking more especially of the mining districts surrounding Juneau.

(It is understood this testimony is subject to the same objection as similar testimony of the preceding witnesses. Objection is overruled and plaintiff allowed exception.)

A. Yes, I know something about it.

Q. How can a water right be acquired under the custom of miners as obtains in this Juneau gold belt?

A. Just simply go and take it up and use it.

Q. Do you post a notice?

A. Yes, you can. If you are right there to represent it all the time you don't need to—it is not necessary, as I know of.

Q. If you are working on it you don't need to?

A. I don't think you need to do anything. You let the people know you are there—you take the water out and use it. It is the best way to stick up a notice to show you mean all right and are going to use that water for such a purpose, so many inches—that would be very well.

Q. That would give them a water right?

A. Yes, sir.

(Testimony of Hugh Tracy.)

Q. What is the custom in the mining districts about Juneau with reference to the right of the water appropriator to cross the mining claims, quartz and placer, that belong to other people in order to build the necessary ditches, flumes, canals and dams, in order to make his diversion and appropriation of water?

A. Well, I think they all went right ahead and brought it across and said nothing about it—there was no fight made. Generally, we went right ahead and took the water across anybody's [1015] ground and there was no objection.

Q. Do you have a right to do this?

A. Under the custom, I think so.

Q. Do you know of any ditches that were constructed here in this district?

A. I know of them. I worked up in the Basin two years. I worked with Campbell & Coombs—they had the ditch all built when I went up there and we used it and they added to it and wherever it was broken, fixed it and got it running, where they wanted it—we never had any kicking about ditches one way or the other.

Q. Do you know where the Nowell ditch was built to take the water out of Glacier Creek?

A. No, Nowell wasn't up there when I was there. They bought out Coombs & Campbell or Campbell and came after.

Q. Do you know where the Treadwell ditch is built, in a general way, on Douglas Island?

A. Yes, sir.

(Testimony of Hugh Tracy.)

Q. How long a ditch is that?

A. I never was over it all. It seems to be all over the island now.

Q. Are there mining claims scattered all over the length of the ditch?

A. Yes, there are a great many.

Q. Do you know the owners of the claims across which the ditch flows?

A. No, sir. I know the Treadwell Company and the people that represent them, a good many of them—there may be others.

Q. The custom you have spoken of—does that ever change in the district? During the time you have been here, has the custom [1016] ever been any different from the custom you have related?

A. Not that I know of.

Cross-examination.

(By Judge WINN.)

Q. The only ditch you know anything about in Silver Bow Basin is what ditch?

A. This ditch he had was under Hartrader, Coombs & Campbell.

Q. You didn't go up there until after these ditches were constructed?

A. They had built them or partly built them before that.

Q. And those are the same ditches Charley Boyle testified to a while ago? A. Yes.

Q. And the same one that Hartrader testified to?

A. Yes; we used that water for mining there.

Q. You don't know what consent they got from

(Testimony of Hugh Tracy.)

the owners or anything of that kind to go across the property?

A. No; I never heard any kick in any way.

Q. You say those ditches were built when you went up there—you don't know anything about it from your personal knowledge how they got across that property? A. No.

Q. You live in Douglas? A. Yes, sir.

Q. Are you in the employ of the Treadwell Co.?

A. No.

Q. Have you been lately? A. No, sir.

Q. Now, about this Treadwell ditch you talked about—is that the one that crosses the hillside over the mountain and runs out here several miles?

A. Yes. [1017]

Q. You don't know when they located those water rights, the Treadwell people? A. No.

Q. They have from time to time been gathering up creeks and every kind or source of water, way on up several miles on the other end of the island, haven't they?

A. I couldn't say whether they took it all at one time or different times.

Q. You don't know whether they posted notices and recorded them or anything about it?

A. No, it was not my business—I didn't look for it. I very seldom go up there.

Q. Do you know anybody's mining claims that the ditch crosses? A. Yes, my own.

Q. When did you locate your claim?

A. Four or five years ago.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN FIVE VOLUMES)

EBNER GOLD MINING COMPANY (a Corporation),
Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,
a Corporation,
Defendant in Error.

VOLUME IV.
(Pages 1105 to 1512, Inclusive.)

Upon Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

FILED

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(Testimony of Hugh Tracy.)

Q. The ditch was there when you located the claim?

A. Yes.

Q. Who else owns any claim there that they cross?

A. I don't know.

Q. You don't know whether the Treadwell located their water rights first or whether the other men located their claims first? A. No; I do not.

Q. And it is from this knowledge that you have that you testify to the general custom that Mr. Hellenenthal has questioned you about? A. That is all.

Witness excused. [1018]

[Testimony of Victor Lundquist, for Defendant.]

VICTOR LUNDQUIST, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you resided here?

A. Since 1887.

Q. Have you done any mining in this district?

A. I work on mines.

Q. Have you helped build any ditches? A. No.

Q. Do you know the customs of miners in the district surrounding Juneau that governs the acquisition of water rights?

(Same general objection. Also no foundation laid. Objection overruled and exception allowed.)

Q. Do you know the custom—do you know what the custom is? A. No, I do not.

Q. Do you know what the custom of miners is with

(Testimony of Victor Lundquist.)

reference to the right to build ditches across mining claims?

A. Yes; as far as I understand you can build—

Q. Let me ask you this: what right has anyone to build ditches and canals across mining claims under the custom of miners, as you understand them in this district?

A. They have a right providing he gets the right from the man who has a right to the water first—he has to get permission from him to get the water out of the creek and build a flume and get the water. That is the way I understand it.

Q. If a man is trying to get water from the creek to the water right and there is a mining claim between him and the creek, has he the right to cross that with his ditch under the custom of miners as you understand it?

A. I don't know anything about that. [1019]

[**Testimony of Charles Morse, for Defendant.**]

CHARLES MORSE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you lived here?

A. I have been here since 1882.

Q. Have you followed the business of mining, more or less, since you have been in the country?

A. I have been mining more or less.

Q. Did you mine before you came here?

A. Yes, sir, in Montana.

(Testimony of Charles Morse.)

Q. How many years did you mine in Montana?

A. I was there from 1866 to 1874.

Q. Do you know what the custom of miners is in the district surrounding Juneau governing the acquisition of water rights?

A. All I know is what the miners have done here. I never made any.

Q. You may state how the right to the use of water can be acquired in the running streams in this locality under the miners' custom as you know it.

(Same general objection. Overruled. Exception.)

A. Wherever I have been you post your notice and then go to work on your ditch and take out the water and utilize it.

Q. What right has the water appropriator or the one seeking to acquire the water right to cross unpatented mining claims of others, both quartz and placer, with his ditches, canals, flumes and dams and other necessary structures to divert and convey his water, if any?

A. I know outside of here we have crossed properties, different [1020] claims, with ditches.

Q. And that right exists under the custom?

A. Yes; that is the way the miners' laws were those days, in Montana and other places.

Cross-examination.

(By Judge WINN.)

Q. In Montana, do you say?

A. Yes, in the early days.

Q. You know there is a United States statute

(Testimony of Charles Morse.)

where you go on Government land to locate water and locate that before the claims are located down below that you can cross the claims with your water—is that the custom your refer to?

A. The way I mean it is under the miners' law.

Q. Did you ever operate any mines in Silver Bow Basin? A. I never did operate any here.

Q. Did you ever run any ditches yourself?

A. Yes, I did that in Montana.

Q. You never ran any ditches across anybody's land in Alaska?

A. I never had occasion to but I saw others do it.

Q. Up here in the Basin?

A. No; not up here—I have been up here and looked at them, the Coombs & Campbell and Hartrader ditches.

Q. You don't know anything about when Hartrader and those people took up their water rights?

A. No, I don't know where—everything was staked in the Basin when I came here, every foot of ground up there—placer mines and there was some quartz claims taken. There was Archie Campbell had a quartz claim staked there and Bennett had a quartz claim and another one called, I think the Morris G.

Q. You heard Hartrader and Charley Boyle and the rest of them [1021] testify a while ago?

A. Yes.

Q. Those are the same ditches you know about?

A. Yes; I just merely seen them up there.

Q. You heard their testimony about going on land that was not claimed by anybody to locate the water?

(Testimony of Charles Morse.)

A. Yes.

Q. You don't know anything more about that than you have heard them tell? A. No, I do not.

Q. Did you ever attend any of these miners' meetings in early days? A. Yes. I did.

Q. Those miners' rules and regulations were all written out and you had your books, records, etc., and the rights that people were exercising then they used by reason of those rules and regulations?

A. Yes, they used them.

Q. You have never seen a miners' meeting here lately? A. No.

Q. Do you know when the last miners' meeting was ever held here, here in the Harris mining district?

A. I couldn't say, hardly.

Q. Did you attend the trial of that Perseverance case over the Lurvey Creek water right?

A. No, I wasn't here at that time.

Q. For fifteen or twenty years there has not been any miners' meeting here, has there, under those rules?

A. No; there has not been a miners' meeting since.

Q. Since the courts have been established here, there never has been a miners' meeting here in the district, has there? A. No, not that I know of.

Q. Since the first Judge has been here to hold court in Juneau? A. No. [1022]

[Testimony of Thomas Wilson, for Defendant.]

THOMAS WILSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. When did you come to Alaska? A. 1884.

Q. How old are you? A. 68.

Q. How long have you mined?

A. About forty years.

Q. Do you know the custom of miners in the mining district surrounding Juneau and the Juneau gold belt?

A. I never seen any in Juneau to know anything about them.

Q. Do you know the custom of miners with respect to the appropriation of water—how they take up water rights?

A. They take them up and use it right along every place I have been except here, and here I think they have done the same.

Q. What right under the custom of miners here, as you understand it, has anyone building a ditch to take up water, to cross mining claims of other people, quartz and placer claims?

A. I never heard any trouble about it going across them.

(Same general objection goes to this line of testimony.)

Cross-examination.

(By Judge WINN.)

Q. You came here in 1884? A. Yes, sir.

(Testimony of Thomas Wilson.)

Q. Do you know that some time prior to that time they had an organization of what is called the Harris mining district here? A. Yes, I heard of it.

Q. Did you ever attend a meeting of the miners here in early days? A. No.

Q. Since you have been here, since 1884, have you ever known of any such meeting being held of the miners?

A. They held one in 1885—it was a rough affair and I went away. I didn't want to be in it. [1023]

Q. Kind of a rough affair?

A. Kind of a rough affair, or I thought it would be.

Q. And there has been no attempt since that last affair to hold a meeting of the miners? A. No, sir.

Q. You know that they had some rules and regulations and had some books they kept them in?

A. Yes, I heard of that.

Q. And had little pamphlets that they issued then in those days? A. Yes, sir.

Q. But there never has been any attempt to live up to those miners' rules and regulations since 1885?

A. No, sir; there has not.

Q. Did you hear Mr. Hartrader and some others testifying about the use of the water in the Basin in early days? A. Yes; I saw a ditch there in 1885.

Q. Those ditches are the same ones you heard Charley Boyle describe and Hartrader and I think Charley Morse—those are the same ditches you saw up the Basin? A. Yes, sir.

Q. Where is the Hartrader ditch and the Bulger

(Testimony of Thomas Wilson.)

ditch? A. There was three of them, I think.

Q. And as to how they got across the property with the ditches, whether they got the consent of the owners or not, you don't know?

A. No; I never heard a word. I helped dig one but I never heard a word about crossing the claims.

Q. You never dug a ditch there yourself?

A. No, I never owned any there—that is the reason I know so little about it.

Witness excused. [1024]

[**Testimony of Dan Kennedy, for Defendant.**]

DAN KENNEDY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. In Juneau.

Q. How long have you lived here?

A. Since 1881.

Q. Have you followed the business of mining in this district?

A. For the first two years—1881 and 1882.

Q. Do you know what the custom of miners is in the Juneau mining district, including the Harris mining district, relating to the appropriation and acquisition of water rights?

(This testimony is subject to the same general objection and exception.)

A. As far as the water rights, there was very little trouble with water rights.

Q. How can a man get a water right under the custom of miners?

(Testimony of Dan Kennedy.)

A. If you want a water right, providing another party owned the ground, you would have to go and ask their privilege and you could take it. You had to do them no injury in no shape or form—among the miners themselves—you could do them no injury.

Q. If you didn't do any injury could you cross another man's mining claim?

A. Providing you didn't put the flume or whatever you had in his road—if you did you would have to move it.

Q. If you didn't hurt him you would have the right under the miners' rules to build a ditch across his ground?

A. You would have to ask them for the privilege first, as a rule—when they had their first meeting, that was in 1881, as I understand it, or 1882, I think it was 1881.

Q. How was it since? [1025]

A. There was nothing about it since that I know of. It appeared there was nobody wanted the water but what was using it.

Q. Who had the right to take up water?

A. Anybody had the right to take up water where it was Government land.

Q. Could they take it up if they didn't have a use for it?

A. You can't let no water run to waste if another party wants it.

Witness excused.

[Testimony of Charles Houser, for Defendant.]

CHARLES HOUSER, called and sworn as a witness for the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. I came to Juneau in 1886.

Q. What has been your business since you have been here? A. Mining, mostly, and prospecting.

Q. In connection with your mining work have you had any occasion to build ditches or appropriate water rights?

A. Not around right here, no—in the interior, yes.

Q. Do you know what the custom of miners in the Harris mining district and other mining districts adjoining the Harris mining district in the Juneau gold belt is with reference to the appropriation of water or the acquisition of water rights in general?

A. No, I do not.

Q. You don't know the customs of miners in this district?

A. I have never built any in this district and never mined in the district.

Witness excused. [1026]

[Testimony of Charles Malloy, for Defendant.]

CHARLES MALLOY, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Right on the beach.

Q. How long have you lived in Juneau?

A. I have lived here sixteen years.

(Testimony of Charles Malloy.)

Q. What business have you followed since you have been here?

A. I followed most everything to make a dollar.

Q. You have not mined much lately here?

A. Not in the Basin. I have been mining down on the beach a good deal.

Q. Not around the Basin? A. No.

Witness excused.

**[Testimony of R. G. Whalen, for Defendant
(Recalled).]**

Mr. WHALEN, recalled:

(By Mr. SHACKLEFORD.)

Q. I will ask you if this morning you have made an investigation of the width of Gold Creek as same is platted on exhibit 7 as it passes through the Lotta claim. A. I did.

Q. Did anybody go with you? A. Mr. Lindsey.

Q. Tell the Court what you did.

A. We measured the width of the stream across the face of the Alaska-Juneau dam and it measured, the dam itself—the width across the stream—it was 25 feet, but that is not perpendicularly across the stream, at a point about 12 feet above the dam where the stream flowed between a large boulder and the bank, the stream flowed within a width of 6 feet.
[1027]

By the COURT.—You mean at right angles across the stream? A. Yes, sir; at right angles.

Q. These measurements were taken with a tape-line? A. Yes, sir.

Q. One on one side of the stream and one on the

(Testimony of R. G. Whalen.)

other? A. Yes, sir.

Q. Give us the measurements.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. At a point about 100 feet below the Jualpa intake the width was 6 feet; at the Jualpa intake the width of the creek was 22 feet; 100 feet above the Jualpa intake the width of the creek was 12 feet. At the point as near as we could tell where the upper side line of the Lotta as staked on the ground would intersect Gold Creek the width was 15½ feet.

Q. Indicate on this exhibit 7 the place where the Jualpa high line flume intersects the creek? Mark a "J" there?

(Witness does so.)

Q. How did that correspond with the creek as platted on the ground at the point "J"?

A. At the point "J" it doesn't correspond, but at the other points it does. The creek is at a considerably higher stage than when we measured it last fall, and there is a flat bench that the creek has covered with sort of shallow water at one side, above the point "J."

Q. At the present time it has been raining two days? A. Yes, and the snow is melting.

Q. And this is the 6th day of June? A. Yes.

Q. Your measurements were made to-day, on the 6th of June.

A. Yes, sir; on the 6th of June. [1028]

(Testimony of R. G. Whalen.)

Cross-examination.

(By Judge WINN.)

Q. It is a pretty cold 6th of June too, is it not?

A. Rather cold for the 6th day of June.

Q. Quite a little snow has fallen up the mountains—there was last night, was there not?

A. I don't know about last night; there was a little falling this morning.

Q. Were you up there to see how many of the company's stamps were falling this morning on account of the water? A. No, I have not.

Q. Did you measure this water on the level of the surface of the flume?

A. On the level of the surface of the flume.

Q. As you found it to-day?

A. As I found it to-day.

Witness excused.

[Testimony of I. N. Moore, for Defendant.]

I. N. MOORE, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. You live in Juneau? A. Yes, sir.

Q. How long have you lived here?

A. Since the spring of 1886.

Q. What business have you followed since you came here? A. Most mining and boating, etc.

Q. What business did you follow before you came to Juneau? A. Mining, mostly. [1029]

Q. What districts did you mine in?

A. In Humboldt County, Nevada; in New Mexico,

(Testimony of I. N. Moore.)

near Silver City; in Arizona, in the Clifton Copper Mines, and also to some extent in Minnesota, not in the iron mines, however—mined there for gold but didn't find much.

Q. Since you have been in Alaska you have been quartz mining principally?

A. Yes, sir; mostly my own—prospecting and quartz mining.

Q. Do you know the custom of miners with reference to the appropriation of water and the acquisition of water rights in the Juneau gold belt?

A. I don't definitely know the custom or practice or law, but I always supposed—

Q. How, under your understanding of the custom in this district, can rights to the use of water be acquired?

A. I understand so, yes—according to the laws; it is Government water.

Q. Now, where water is running in a running stream that has not been previously appropriated by anybody else, how can anybody acquire the right to the use of the water running in such streams under the custom of miners?

Judge WINN.—Do you know what the custom is here among miners?

A. No, not definitely—in practice, I don't, because I don't know of any instance where they have taken up water and used it or utilized it. I only know what I have seen and hear and read about it.

(By Mr. HELLENTHAL.)

Q. From what you understand about the custom,

(Testimony of I. N. Moore.)

how can the right to the use of water in a running stream that has not been previously appropriated by anybody else be acquired?

Judge WINN.—We object. No qualification.

Objection overruled. Plaintiff allowed an exception. [1030]

A. He can locate, make location of it, record it and divert it from the regular creek and return it again if he wants to, and state the number of inches you wish to take and where you are to use it and what for—keep a record of it.

Q. What, if any, right under the custom, as you understand it, in the Juneau district and the surrounding districts, surrounding the Harris mining district, has one seeking to appropriate water in the method you have described, to cross intervening mining claims with ditches and flumes?

A. I don't know of any particular instance of it. I don't know that there has been any objection to it. I suppose they could do that, that was my supposition—they could take it across a man's claim—where it is located off his claim whether they could take it across or not, I don't know about that definitely.

(By Judge WINN.)

Q. What you mean is, water that belongs to the Government and not anybody else—that is where a man goes on United States Government land and locates the water? A. Yes.

Q. You have never known of any instance where a man has a quartz mining claim of anybody trying to get on that claim and take the water away and convey

(Testimony of I. N. Moore.)

it off somewhere else to be used?

A. No, sir; I don't know of any such instance.

Q. You never have known of any instance where one miner has undertaken to go on the property of another and take the water off?

A. No, I don't think I do.

Q. It is different where they go on United States Government land and take the water off? A. Yes.

[1031]

[Testimony of F. W. Bradley, for Defendant.]

F. W. BRADLEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. What is your name and residence?

A. F. W. Bradley; San Francisco.

Q. You are the president of the defendant company in this case? A. I am.

Q. How long have you been associated with the Alaska-Juneau Company. A. Eleven years.

Q. How long have you been its president?

A. Eleven years.

Q. I will call your attention to an exhibit marked Defendant's Exhibit #11, and ask you to state to the Court in a general way what that represents and how it was made and for what purpose it was made.

A. It represents in a general way the property of the Alaska-Juneau Gold Mining Company.

Q. And I presume it has been made to illustrate the location of that property with reference to Gold Creek and Gastineau Channel, showing the different outlets

(Testimony of F. W. Bradley.)

by which Gastineau Channel can be reached. Now, referring to the strip of land running from Snowslide Gulch around Gold Creek and down the hillside to a point marked "proposed 200-stamp mill—I will ask you to explain how that's platted with reference to the company's holdings.

A. It is supposed to represent a series of mining locations to cover a right of way for the tramway and flume-line.

Q. You understand that a portion of this ground is contested? A. Yes, sir. [1032]

Q. With reference to the property of the Alaska-Juneau Company I want you to give the Court a history of its development, together with a history of the acquisition of various lines of claims leading up to it and the proposed methods as to the development.

A. I first visited the property in the summer of 1900, eleven years ago. I found at that time Superintendent Archie Nevins in charge and that he had a scheme outlined for operating the property—he had a scheme outlined for running a tunnel from Snowslide Gulch, and to protect that scheme he had locations made called the Colorado, Idaho, Oregon and Wyoming and a number of others, I believe, which locations had been made in 1899. He called my attention to his plan—

Objected to as hearsay. Objection overruled. Plaintiff allowed an exception.

WITNESS.—(Continuing.) —and urged that it be carried out. I went over the property at that time and it didn't appeal to me as particularly attractive.

(Testimony of F. W. Bradley.)

The working season was then but five months in the year. It has been no longer since, because there has been no change made in the equipment of the property and each year since the thirty-stamp mill has been run for information. The grade of the rock has been too low to permit working the property for any profit with the thirty-stamp mill, and all the work that has been done since then has been for the purpose of securing information that would justify the carrying out of the only feasible scheme for working the property on a scale that would yield a profit, and in order to work the property the year round the mill must be at sea level, in order that there may be a proper distribution made of the tailings, and in order that the salt water may be used for battery [1033] purposes when the fresh water supply is frozen up. The tunnel from Snowslide Gulch is a comparatively short tunnel to the vein formation, for the reason that there is a long fault traverses the country along the line of Snowslide Gulch and practically through the centre of the Alaska-Juneau Company's property which throws the vein towards Gold Creek and Snowslide Gulch. Because of the fault the running of the tunnel would be comparatively easy and the distance to cut the vein would be short, it would be within 3,000 feet, and then would be crosscut, an addition 2,500 feet would reach the portion of the property in depth that we are working now. The running of that tunnel would develop the property about a thousand feet deeper than it has yet been developed, rather 800 feet deeper than it has yet been developed, and if any ore

(Testimony of F. W. Bradley.)

is found in the running of that tunnel to justify underground mining any time, then the proposed sea level tunnel would be run. The property does not justify the running of that tunnel, now, because the length is too great and the expenditure would be altogether out of the question, would be out of all proportion to the net value of any ores developed in the Alaska-Juneau mine so far, but we have been constantly developing and sampling the property and it has reached a stage now where the original scheme is justified. The company is now ready and prepared to run the Snowslide Gulch tunnel tramway and flume to run around the hill.

Q. (By the COURT.) How many men have you employed on this property during the working season on the average, in the mill?

A. I should say thirty-five—about the average during the working season. [1034]

Q. With reference to reaching the ore bodies in the Juneau gold belt, what would be the difference between using the tunnel from Snowslide Gulch and the tunnel from Gastineau Channel direct in distance, approximately?

A. The tunnel from Gastineau Channel direct to reach the ore bodies on our dip underneath where they are now being mined would be approximately 9000 feet and the tunnel from Snowslide Gulch to reach that portion of the vein that has been faulted towards Gold Creek would be about from 2,500 to 3,000 feet.

Q. And as I understand it, the dip of the ore bodies in that belt is away from Gastineau Channel?

(Testimony of F. W. Bradley.)

A. It is away from Gastineau Channel; yes.

Q. Describe in a general way the work that has been done on that property during the last few years toward developing it.

A. The fault which runs in a direct line, in a general line from the thirty-stamp mill shown on the plat towards Snowslide Gulch, most of the mining that has been done—every season there has been mining over different portions of the surface of the property and there has been two long crosscut tunnels driven at an elevation of about 1,300 feet above sea level, and from these lower crosscut tunnels there has been slabs blasted off the sides. Those slabs were originally milled in the five-stamp mill built at the mouth of the tunnel for the purpose of sampling the ore found in the tunnel. Since that the ore has been hoisted to the thirty-stamp mill and sampled there. There has also been a great many tests made in sorting the rock to see if a better rate of profit could not be worked out. There has also been [1035] milling tests made of the rock that lies in between the bands of the vein matter—that is all payable grade.

Q. From the time you took charge of the property to the present day what has been the intention with reference to the holding of the Colorado and these claims indicated along here in the driving toward the main body from the tunnel?

A. It has been the intention to hold them, and to fortify that intention they have been patented for the purpose of protecting the right of way for the tunnel.

Adjourned until to-morrow at 10 A. M.

(Testimony of F. W. Bradley.)

June 7, 1911—Morning Session.

Q. It has been claimed in this case that the idea of practically adopting and developing the Snowslide Gulch site by the Alaska-Juneau people was adopted after Mr. Bent and his people came up here last summer. I wish you would tell the Court what was done with reference to that site during the previous year looking toward the method of locating a railroad, etc.?

A. The summer of 1909 when I was up here I took up with you and Mr. Kinzie the matter of surveying and filing a right of way for a railroad line from the mouth of the proposed Snowslide tunnel to the point on the hill above the site of the proposed mill and after considerable discussion it was concluded that that would not be feasible. I then asked Mr. Kinzie to locate a string of quartz locations covering whatever vacant ground there might be along the line of the proposed railroad for a tram line.

Q. I wish you would explain just what preparation you made with reference to getting the money and the arrangement with reference to the actual intention to develop this property [1036] along the line of the Snowslide Gulch development?

A. The matter has all been arranged for and we are already running a tunnel that is proposed to take the water through to protect from snowslides; that when that tunnel cuts the line of the fault I testified to yesterday we will then turn on the line of that fault—

Judge WINN.—I object to any future things they intend to do or expect to do as incompetent, irrelevant and immaterial and not tending to prove any of the

(Testimony of F. W. Bradley.)

issues of the case.

Objection overruled. Plaintiff allowed an exception.

A. When this flume tunnel cuts the line of that fault we will then proceed on the line of that fault within the property of the Alaska-Juneau Company with this Snowslide Gulch tunnel.

Q. I will ask you if you have made the arrangements with the Alaska-Juneau Company to insure control of the same through a syndicate—have you arranged with the syndicate, made proper financial arrangements to carry the thing through?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The Alaska-Juneau Company is a West Virginia corporation with nonassessable stock. Up to this time, with the exception of the first year of operations, there has been no profit whatever—whatever profit has been made has been put back into the development of the property. It therefore became necessary for the Alaska-Juneau Company to arrange for some treasury stock and to use this treasury stock—

Judge WINN.—We object to that as not the best evidence, and demand the production of the books so we can cross-examine Mr. Bradley about these matters.

By the COURT.—The objection to the evidence offered is overruled. [1037] When we come to your cross-examination the matter of the demand for the production of the books will be ruled on then. Plaintiff allowed an exception.

(Testimony of F. W. Bradley.)

WITNESS.—(Continuing.) The company arranged for the issue of treasury stock to pay for the running of this tunnel from Snowslide Gulch and also to pay for the running of the railroad track, the tram track around the hillside and the building of a mill on the beach.

Cross-examination.

(By Judge WINN.)

Q. You have been a witness in a great many mining cases, have you not?

A. I have never been a professional witness; no.

Q. You have been a witness in a great many cases where your interests are concerned and where your interests have not been concerned?

A. Where my interests have been concerned as much as they have in this case.

Q. You were one of the expert witnesses in Dalton against the Katalla Company?

A. No, sir; I was asked to give a deposition and I gave it.

Q. Don't you consider that the same as being a witness?

A. No, I didn't consider that being an expert witness.

Q. You did give expert testimony in that case, did you not?

A. I had to answer certain questions in the deposition because it was demanded of me.

Q. That is one case you gave a deposition in that you were not interested in? A. Yes.

Q. How many more?

(Testimony of F. W. Bradley.)

A. None that I know of. I may have given some depositions in other cases but I don't remember of any more—I can't recall any now. [1038]

Q. How long have you been consulting engineer of the combined interests of the Treadwell?

A. Eleven years.

Q. How long have you been consulting engineer of the Alaska-Juneau Company?

A. I have been president of the Alaska-Juneau Company for eleven years.

Q. How long have you been a stockholder in the Alaska-Juneau? A. Eleven years.

Q. Are you also a stockholder in the allied interests over across the way, the Treadwell people?

A. I was.

Q. Do you classify the Alaska-Juneau Company as belonging to the same allied interests?

A. No, I do not; it is entirely separate ownership.

Q. You are one common stockholder in the companies—how many more common stockholders are there in those companies?

A. None that I know of.

Q. You would know if there were any?

A. I would know it; yes.

Q. Are you familiar with the books of the Alaska-Juneau Company—the corporate books?

A. Yes, sir.

Q. Have you them here? A. No.

Q. Where is the head office of that company?

A. My offices in San Francisco.

Q. That is the head office of the Alaska-Juneau

(Testimony of F. W. Bradley.)

Company? A. Yes.

Q. Are all the corporate books down there?
[1039] A. They are.

Q. It would be useless, then, for me to demand the production of the books here during this trial—you couldn't get them here? A. Not very well.

Judge WINN.—For the sake of the record, I do demand the production of the stock-books and all the books pertaining to the Alaska-Juneau Company, as a corporation, during this trial.

Q. You can produce in this case—you have—the reports that have been made by the office over there, they are under control, by Mr. Kinzie and his clerks on the running and operating expenses and the outlay and income of the Alaska-Juneau Company, can you not? A. That is all accessible, yes, sir.

Q. I wish you would have them brought over here. You first came to Juneau in 1900? A. Yes, sir.

Q. You were a stockholder in the Alaska-Juneau Company prior to your first visit to Alaska?

A. I was; yes.

Q. And also was consulting engineer of the allied interests over at Treadwell before you came here—or were you?

A. That was the occasion of my first visit here.

Q. You have been through all of the upper workings, underground workings, of the Alaska-Juneau Company being some tunnels which Mr. Kinzie described and marked on Exhibit 11 (eleven)—you have been through those workings?

A. Yes, I have.

(Testimony of F. W. Bradley.)

Q. First, you run a tunnel that Mr. Kinzie has marked on this exhibit, commencing at the letter "x" and extending probably in a southerly direction, and then you commence another one [1040] at "B" on this map and continued that down in a southerly direction—those are the two tunnels you have reference to that you have been in?

A. Those two tunnels; yes.

Q. Can you give the Court approximately the distance that those tunnels, about what depth they are, beneath the upper surface of the ground?

A. Yes, the elevation at the mouths of their tunnels is approximately 1,300 feet above sea level; the elevation of the mill is about 1,500 feet above sea level; the elevation of some of the higher cuts is about 1,700 feet above sea level.

Q. Look at this exhibit 11 and the map which was attached to the answer in 803-A marked "II." I will ask you if the proposed lower tunnel which runs through this Gastineau Tunnel site and the one that commences on the Colorado claim and is directed in the same direction as one part of this tunnel through the Gastineau Tunnel site and runs parallel to it—I ask you if those are the two proposed tunnels that you have had in contemplation in the past?

A. They are.

Q. This tunnel that is proposed that runs through the Gastineau Tunnel site—do you know how much work was ever done on that?

A. There never has been any work done on that.

Q. Never been any work at all?

(Testimony of F. W. Bradley.)

A. No, not on the tunnel as it will finally be.

Q. You did commence a tunnel there, though?

A. There was work done sufficient to patent the claims.

Q. Was that work done altogether for the patenting of the claims? [1041]

A. It was done for that purpose; yes.

Q. Mr. Kinzie has been here in control of the work of the Alaska-Juneau Company as superintendent and also superintendent of the allied interests of the Alaska-Treadwell for some years.

A. Yes, for some years.

Q. And your business has brought you in contact with each other on this enterprise, you have worked together considerably? A. It has.

Q. Now, you say that this tunnel as commenced on the Gastineau Channel site—the Gastineau tunnel site—was never put in the position that you intended ultimately to run the tunnel. A. It was not.

Q. Where did you expect to commence your tunnel ultimately? A. Approximately at sea level.

Q. This tunnel that was commenced was commenced up on the hillside, way up on the hillside, above sea level?

A. The assessment and patent work was.

Q. I mean the tunnel—the tunnel that was commenced up on this tunnel site was commenced up on the hillside above sea level?

A. It was, but it was not done by Mr. Kinzie—it was done by Joseph McDonald.

Q. And done while Joseph McDonald was superin-

(Testimony of F. W. Bradley.)

tendent of the Alaska-Juneau Company and also superintendent of the allied interests?

A. Yes, sir.

Q. Mr. Kinzie was superintendent under you?

A. He was.

Q. About what altitude above sea level was this tunnel commenced? [1042]

A. I have never seen that tunnel.

Q. You don't know the depth of it as it runs into the hillside? A. No, I have never been there.

Q. You don't know the size of it? A. No.

Q. This tunnel you proposed to run on this Gastineau Tunnel site was to start in at sea level and were you to run it on a level all the way up to the body of your property or were you to have it on a slight incline?

A. It would be on an incline, as mining tunnels are usually run.

Q. So you could run the property on the gravity system to some extent? A. Yes, sir.

Q. Did you ever calculate at what depth you expected to strike the property of the Alaska-Juneau Company up Silver Bow Basin with this tunnel?

A. Yes, sir.

Q. At what depth approximately would your tunnel have struck that property—just approximately, if you know?

A. It would be 1100 feet deeper than the mill above.

Q. You mean the mill now on the Alaska-Juneau property? A. Yes, sir.

(Testimony of F. W. Bradley.)

Q. Is your mill at a lower point considerably than the surface ground of your group of claims?

A. Yes, I said it was 200 feet below some of the upper cuts.

Q. It is 200 feet lower than a good deal of the surface ground of the property?

A. Yes, very much more than that.

Q. What is the altitude of the point on the Colorado lode claim at which you have commenced a tunnel? Altitude above sea level, I mean.

A. It is said to be 420 feet above sea level. [1043]

Q. At what depth, if you continue this tunnel from the Colorado claim as commenced, will that tap your upper basin property? When I say your property, I refer to the Alaska-Juneau Company?

A. That would be 1050 feet below the mill. I will have to correct my testimony as to the Gastineau sea level tunnel—that would be about 1400 feet below the mill instead of 1100 feet.

Q. You wish to correct it to that extent?

A. Yes.

Q. What incline did you contemplate running that Gastineau sea level tunnel at?

A. About one-half of one per cent.

Q. And what is the approximate distance from the Gastineau tunnel, from the sea up to your mill, on the Alaska-Juneau property?

A. I don't know what it would be to the mill, but where it would cut the vein it would be about 9,000 feet.

Q. Where do you anticipate or contemplate it

(Testimony of F. W. Bradley.)

would cut that vein—did you say vein or formation?

A. Vein.

Q. Where on your property did you expect that sea level tunnel to tap the vein?

A. About the northern extremity of the property.

Q. The northerly part of your property would be the entire upper end of the property, would it not?

A. Yes, it would be.

Q. I will ask you if these workings that have been placed upon your property up there in the way of the tunnels I referred to a while ago that Mr. Kinzie had described, if they could not be used in conjunction with either your sea level tunnel [1044] or your tunnel from the Colorado lode claim in the opening up, developing and mining of the ore from your property. A. They could be used; yes.

Q. In 1900, when you came here, was the thirty-stamp mill in operation upon this property?

A. What is called a thirty-stamp mill was in operation. I don't remember whether we added five stamps more to it or not. The stamp-mill was in operation.

Q. What about this five-stamp mill you testified concerning yesterday?

A. That was also in operation, on the property and in operation. I had it operated that summer on some waste dumps.

Q. On this exhibit 11 can you locate approximately where that five-stamp mill was or is?

A. It was at the north end of the zero, that 30 on exhibit 11—it was afterwards moved to the mouth

(Testimony of F. W. Bradley.)

of the tunnel at which the letter "B" stands.

Q. Has that mill ever been operated since you became president of this company? If so, what years?

A. Yes; 1900 it was in operation; I had it operated on the waste dumps and determined what the waste would yield and I had it moved to the mouth of the tunnel marked B in order to determine what the rock in that tunnel would mill.

Q. Was your thirty-stamp mill running at that time?

A. Yes, the mill called the thirty-stamp mill.

Q. You don't remember how many stamps you had in it at that time?

A. No; I was under the impression we added five stamps—that may be a mistake, though. [1045]

Q. Any other year you ran the five-stamp mill?

A. I don't remember whether that was run more than one season or not—it was run the season of 1900 and then shut down for a while. When those two lower tunnels were run it was moved down the hill to crush the rock from those tunnels, to determine the value of that rock.

Q. How many years since 1900 do you remember that mill having been operated—the five-stamp mill?

A. I think it was one or two seasons, that was later on, though—not immediately following the year 1900.

Q. Do you remember what years after 1900 this mill was run?

A. No, but these reports you called for will show.

Q. Are you certain when you did put in the full

(Testimony of F. W. Bradley.)

thirty stamps in your thirty-stamp mill—what year?

A. They may have been there all the time—I rather think now they were.

Q. Then, as I understand, you never did run this property as a commercial proposition?

A. No; there has been no profit made out of it during my time.

Q. Were you running it just as a sampling proposition all the time?

A. We were running it in order to determine its value, because with thirty stamps on that grade of ore and with a working season of less than five months per year, it was not a commercial proposition at all.

Q. You say now, without examining the reports, that you never did run it at a profit?

A. Some years it has run at a profit and some years it has run at a loss, but the profit, whatever profit there may have been, has been used to wipe out any loss and has also been used in the further development of the property. [1046]

Q. During these years you have been putting some of the money you obtained from the running and operation of the plant into its further development?

A. Yes, that is the explanation why the development of the property has been so slow, for the reason that we have had no money outside what that thirty-stamp mill would earn for us during less than five months per year.

Q. How much money outside of the profits from the running of your mill up there do you estimate you have put into the opening up and development

(Testimony of F. W. Bradley.)

of this property since you have been president of the company?

A. Well, there has been no money put in outside of what the property itself has earned.

Q. What do you estimate you have put into this property since 1900 from the profits of the property itself?

A. Well, practically the only outside investment has been the purchase of the Aurora claim and the locating and patenting of outside ground; the balance of our expenditures practically were operating costs. We fixed up the mill and have added crushers to it and have also done this other development work. If the development work properly could be called an operating cost, I should say that the total expenditures there have been fifty to sixty thousand dollars in the way of developing and proving the property.

Q. Does that include the purchase price of this property you speak of that you have bought?

A. Yes,—it may be more or less than what I have said, probably more.

Q. Now, besides these tunnels on the upper part of this property that have been run, described by Mr. Kinzie, what other work, generally, has been done upon this property to your [1047] knowledge, looking towards the opening up and development of it or for any purpose?

A. There is an upper tunnel that has been continued and run ahead; there has been one or two raises put up from one of the lower tunnels; there has been a great deal of work done over the surface

(Testimony of F. W. Bradley.)

ground in order to block out and prove the average value of the tonnage.

Q. Approximately, do you know the length and size of the tunnels that are on the property?

A. No, I haven't them in my head.

Q. You couldn't give the approximate length of them—the size of the tunnel?

A. No, I know what has been blocked out, though.

Q. Did you say you ran an open cut, too—did some crosscutting.

A. Yes, there has been a great deal of work of that kind done on the surface.

Q. You couldn't give an estimate of the length of your crosscuts or open cuts or anything of that kind?

A. No; about all I have in mind is a summary of it, of what the work has accomplished.

Q. Then, there has been a good deal of other kinds of work besides this, the open cuts and the tunnels?

A. Yes.

Q. What did that work consist of principally and briefly?

A. Milling tests and sampling tests—that has all been done.

Q. You were making milling tests from different parts of the property other than in these open cuts and tunnels you have described?

A. Yes, and milling tests of the different characters of rock.

Q. You came up here in 1910 about what time?
[1048]

A. About the 18th of July.

(Testimony of F. W. Bradley.)

Q. You got here a little ahead of the Bent party?

A. I must have—they arrived after I was here.

Q. You met Mr. O'Boyle and Mr. Bent and those parties while they were here?

A. No, I did not.

Q. Were they over at the mill, the Treadwell?

A. I was told so; yes.

Q. Were they there while you were there or after you had gone? A. I was there.

Q. You said some time in 1909 you had some instructions given Mr. Kinzie to locate the necessary quartz claims and the Colorado claim down to the sea level in order to secure a right of way through there for the opening up and developing of this property on the Gold Creek plan?

A. I discussed with Mr. Kinzie and Mr. Shackelford the matter of filing a located survey line for a railroad there to hold the right of way for a tramway, and the result of that discussion was, it was decided to be the better plan to locate a string of quartz locations to cover whatever ground might be vacant.

Q. You know when you went up there to locate those quartz claims in 1910 you not only covered vacant ground, but you covered all the other ground that was necessary to be covered to complete this scheme, from the Colorado lode claim clear down to the beach, didn't you?

A. That would follow, as a matter of course; yes.

Q. Were you here in the summer of 1910 when Datson and Summers and Mulligan and Lindsey

(Testimony of F. W. Bradley.)

made their locations?

A. I don't know the dates they made their locations. I left on the second of August.

Q. Did you know whether or not any of those locations had been [1049] made before you left here? A. No, I do not.

Q. You and Mr. Kinzie consulted together about it?

A. I talked to Mr. Kinzie about it; yes.

Q. And you and he took a geological map or a topographical map of some kind and looked over it and determined just where Mulligan should go up on Gold Creek to locate the water? A. No.

Q. How much did you and Kinzie discuss that matter together in 1910 when you were here?

A. There was no discussion—I told Mr. Kinzie what I wanted.

Q. What did you tell him you wanted?

A. I wanted the water located, but I wanted the ground protected and covered.

Q. Some of it had already been protected by prior locations? A. Not that I know of; no.

Q. You didn't make any inquiry about that?

A. I asked that inquiry be made, yes; I asked that the ground be all looked over carefully.

Q. It was not looked over carefully, was it, because some of the locations were filed right over other mining property that had been located for several years?

A. That is permissible if your discovery is on vacant ground.

(Testimony of F. W. Bradley.)

Q. Did you make your discoveries on those claims on vacant ground?

A. I didn't make them; I didn't do the work.

Q. You don't know anything about the discoveries? A. I have not seen them.

Q. Have you stated everything you said to Mr. Kinzie about making these locations in 1910?

A. I have. [1050]

Q. You directed him to go upon Gold Creek and make a location of water at what point?

A. At a point that would fit in with our operations.

Q. You didn't care where he located that water, whether it was on a patented claim or unpatented claim? A. Yes, I did.

Q. What particular claim did you instruct Kinzie to go up there and make your water location on?

A. I didn't instruct him as to what claim to make it on.

Q. What claims do you have in your mind that your company had on Gold Creek at that time?

A. The Oregon claim, the old Oregon claim under the Corbus location.

Q. You didn't know at that time that there had not been a lick of work done on the Corbus claim since 1905, did you?

A. I didn't know it until afterwards.

Q. Did you know it before you left here in the summer of 1910?

A. I knew it before I left here; yes.

Q. Did you know that Datson had gone up there

(Testimony of F. W. Bradley.)

and had staked virtually over the same old Oregon claim and made a location of it?

A. No, I didn't know that.

Q. That was Mr. Kinzie's work?

A. That was Mr. Kinzie's method of covering the ground.

Q. Do you know whether any other of those various locations from the Colorado claim down around what is marked on this exhibit 11 in pink, clear on down to the Gastineau Channel which is your proposed system of opening up on the Gold Creek system, were any of those claims located before you left here, to your knowledge?

A. They had been located prior to my arrival here last summer. [1051]

Q. How many of them, do you know?

A. I think all of them.

Q. Then, you were told about the location of them by Mr. Kennedy when you got here that year?

A. That was part of our plan of the summer before—1909.

Q. You stated a while ago that you directed Mr. Kinzie while you were here in August to go up there and make the necessary locations to protect your right of way on this Gold Creek system—did you not state that a few minutes ago?

A. I stated in 1909 I directed him to cover this right of way. I said that in 1910 I told him to locate the water and make necessary locations to protect it. It was in 1909 that I told him to locate the right of way.

(Testimony of F. W. Bradley.)

Q. You state, now, that you did not tell Mr. Kinzie in 1910 to go up there and make the necessary locations to protect the right of way of this Gold Creek system?

A. I repeat, as I said before—in 1909 I told him to make locations to protect the right of way for the railroad and tramway, but in 1910 I told him to locate the water and to cover the ground to protect it.

Q. Cover the ground to protect the water?

A. Yes, sir.

Q. Did he go with you when you were here in 1910 and tell you anything about the Datson locations of claims and Summers locations and Tompkins locations and Lindseys locations along the right of way that you proposed to bring the water out of Gold Creek from?

A. No; I left too suddenly—I left on the second of August. I was telegraphed for and had to leave.

Q. I though you said you arrived here about the second of August.

A. No, I arrived on the 18th of July. [1052]

Q. Now, you have stated everything you talked to Mr. Kinzie about in 1910 concerning this Gold Creek right of way? A. Yes, sir.

Q. If it turns out from the record in this case that a portion of these locations which I have just mentioned were made between the 18th day of July and the second of August, then they were made while you were here, were they not?

A. If that is so, yes—I had ordered them made,

(Testimony of F. W. Bradley.)

though, when I was here in the summer of 1909.

Q. But you didn't know anything more about those locations than you have testified about them?

A. That is all—to cover the right of way for the railroad.

Q. It is marked on this exhibit 11 proposed flume and tram—that is what you mean, is it?

A. Yes, sir.

Q. Did you know anything about any locations that were made down about the words "Proposed 200-stamp mill" that were made in the summer of 1910, down along the beach?

A. Yes, I know there were old locations there joining our Utah claim.

Q. Do you know that the claims located there in behalf of your company were located over the claim of Reck and Shattuck, for which application for patent had been made some years ago?

A. I knew there would be conflicts, yes—we would only get what was vacant.

Q. Do you know anything about Datson locating later in the fall what is called the Oregon lode claim up on Gold Creek? A. I know about it now; yes.

Q. You didn't know anything about that location until you arrived here on that trip?

A. No; I have heard about it since, of course.

[1053]

Q. Do you know whether or not that location was made after you arrived here?

A. I would only know from the record when it was made.

(Testimony of F. W. Bradley.)

Q. Now, as to the point of diversion of the water on Gold Creek, you didn't consult with Mr. Kinzie about that at all, did you?

A. No, I told him to locate it.

Q. You have been up Gold Creek since you came here this trip? A. No, I have not.

Q. You know about where your dam is put in up there? A. Yes, I know about.

Q. I will ask you what is the altitude of that point above Gastineau Channel or the sea level.

A. It is some distance—about 420 feet—I don't know just what the grade of the flume is.

Q. Do you know your Idaho claim up there?

A. Yes.

Q. What is the approximate altitude of that above sea level?

A. Say all the way from 300 to 600 or 500.

Q. That is lower down the creek than the Colorado? A. Yes.

Q. As to the proposed route, then, and the exact place of laying out the flume and tram from this tunnel in the Colorado claim down to the seashore, I believe you said you have had nothing to do with that? A. Except to order the locations made.

Q. You said something about this tunnel that has been run in the hillside on the Colorado—is that the tunnel that you ultimately expect to run to tap the body of your property up above on the hill?

A. When that tunnel cuts the fault that traverses the country there we expect to follow that fault on into the Juneau property; yes. [1054]

(Testimony of F. W. Bradley.)

Q. How far have you gone with that tunnel?

A. The tunnel is being driven in now; it is in about 200 feet and has about 400 feet more to go to get under Snowslide Gulch; in the course of construction of that tunnel I expect the fault will be cut.

Q. You start in on the Colorado claim—how far do you say you have run the tunnel?

A. About 200 feet.

Q. You have got to the point in that tunnel where you expect to make a turn off up the creek?

A. No; the fault has not been found yet.

Q. Have you been in the tunnel since you went up there? A. No, I have not seen the tunnel.

Q. Don't you know it is a fact that you have already made a turn in that tunnel, to run off this tunnel for your flume-line?

A. Why, the tunnel is being run now for a flume and it has accomplished two purposes—it will protect the flume from the snowslides and will also determine the point where the fault is and on that fault we will drive the main tunnel for the mine.

Q. Is not this the fact, that that tunnel stands in this condition to-day—you have run in a certain length, I don't know how far, and you have already made a branch off from your main tunnel and started the tunnel for your flume and that you are steadily driving ahead on that point your main tunnel?

A. I don't know—there might be several tunnels around there; all I know the company is driving a tunnel and it has accomplished two purposes.

Q. You have driven that tunnel in already a cer-

(Testimony of F. W. Bradley.)

tain length and then you have branched off with the tunnel that you [1055] propose to put your water flume through and have driven on your main tunnel past that point where you have branched off—is not that the fact?

A. I don't know what the physical condition up there is, I haven't seen it—there may be a number of old tunnels around there.

Q. I will ask you if your company, under the supervision of Mr. Kinzie, has not driven that tunnel in a certain length and then branched off in the manner I have stated to put in that tunnel for the water-flume and have then driven your main tunnel on 60 or 70 feet beyond that point?

A. If that is the case I don't know it—I have not been up there. I have not seen it.

Q. If Mr. Kinzie testified to that, you would not doubt it?

A. I would believe it, yes—if I saw it I would believe it, too.

Q. If that is true, he has already found the fault you are talking about and branched off in it?

A. No, he has not found it yet.

Q. Didn't you say you expected to branch off at that fault?

A. Yes, that is the intention, the correct intention.

Q. Then, if Mr. Kinzie has branched off already, he has either reached the fault or has branched off at a different point than you expected to branch off?

A. That would be the case; yes.

Q. Now, you testified about raising money. Have

(Testimony of F. W. Bradley.)

you already issued some treasury stock of this company, did you say?

A. Yes, we have provided some treasury stock.

Q. Issued it?

A. It is provided—it is not issued.

Q. You mean it is provided by certain resolutions, etc., of the board of directors of the company?

[1056] A. Yes.

Q. You haven't any of those books here?

A. No, I have not.

Q. Have you sold any of that stock?

A. No, it is contracted for, though.

Q. It is contracted for with the D. O. Mills people?

A. No, myself.

Q. With yourself? A. Yes, sir.

Q. You expect to buy it and take it up?

A. Yes, sir.

Q. You have not done so yet? A. No.

Q. And then, when you take up that treasury stock, that will give you a controlling interest in the company? A. That is the contract; yes, sir.

Q. And that is the object in taking it up, to get a controlling interest? A. It is, yes.

Q. When did you pass that resolution?

A. In December, last year—1910.

Q. Did you have a stockholders' meeting then?

A. Yes, it has been ratified in writing by all the stockholders.

Q. That is the way the matter stands at present?

A. Yes.

(Testimony of F. W. Bradley.)

Q. You were negotiating with the D. O. Mills people to take this stock, were you not? A. No.

Q. You didn't have any dealings with them at all about it?

A. I have. Mr. Ogden Mills has a one-third interest in the contract with me.

Q. They have refused to put up any money on it, have they not? A. No.

Q. When did they agree to put up any money on it? A. When I asked them to.

Q. When was that?

A. That was some time last summer. [1057]

Q. Have you anything in writing with those people to bind them, as a contract? A. I have.

Q. Have you got that here?

A. I may have a copy here.

Q. And they have contracted to take so many shares of that treasury stock with you?

A. Mr. Ogden Mills has contracted to take a third of my agreement with the Alaska-Juneau Company.

Q. When did you say you made that contract with the Mills people?

A. That has been made since my contract with the Alaska-Juneau Company, but it was arranged for before.

Q. Do you know the date of it?

A. I think it is February of this year—my negotiations with the Alaska-Juneau Company began before my arrival here last summer.

Q. When you came up here you didn't know anything about the Bent people coming?

(Testimony of F. W. Bradley.)

A. No, I did not—knew nothing whatever about it.

Q. You didn't know anything about the Ebner deal at all? A. No, nothing at all.

Q. Didn't know anything about—that Behrends and all of the stockholders of that company had entered into a contract to sell their stock?

A. I know it by rumor, after I had arrived here.

Q. You are pretty active and have been pretty active in the mining world for the last ten or fifteen years? A. In a small way.

Q. You have been in quite a large way? [1058]

A. No, just my own affairs; that is all.

Q. You have been consulting engineer for a whole lot of big institutions and were interested in the Tacoma smelter, were you not? A. No.

Q. And have cut quite a figure in the mining world for the last ten or fifteen years?

A. In a modest way, yes.

Q. Now, in these positions that you have been in it naturally behooves you to become somewhat acquainted with the transactions going on in the mining world and especially so far as the United States is concerned, does it not?

A. I hear about some of them; yes.

Q. And you have used a great deal of pains and care to hear about them, so as to keep yourself posted about what is going on?

A. I read the papers; yes.

Q. And otherwise you take pains to keep yourself posted? A. What people tell me about them; yes.

Q. Mr. Kinzie keeps you pretty well advised of

(Testimony of F. W. Bradley.)

what is going on about your property up here, does it not?

A. He makes his regular reports; yes.

Q. Keeps you pretty well advised of what is going on in the mining community up here with respect to all the mining undertakings—the Perseverance, Ebner, Sheep Creek and all the rest of the properties? A. No.

Q. If there is any new move contemplated being made which might affect your rights up here he keeps you pretty thoroughly informed of that—does he not? A. I hear about it; yes.

Q. You don't know anything about the newspapers having announced quite a little bit ahead of the arrival of the Bent [1059] party here that they were coming up to undertake some pretty big things up on Gold Creek—did you get any news of that in the newspapers? A. I may have seen that.

Q. You take both newspapers from Juneau?

A. Yes. I never read them, though; they are clipped for me.

Q. They are clipped in your office? A. Yes.

Q. And anything concerning your interest or anything of that kind up here is generally clipped for you?

A. Yes; the boy don't always get the right clippings.

(By Mr. SHACKLEFORD.)

Q. Can you tell approximately the amount of money that has been expended by the Alaska-Juneau

(Testimony of F. W. Bradley.)

Company during the years from 1906 on approximately?

A. The expenditures have been the gross output.

Q. Can you approximate that amount?

A. The gross output has been about 550,000 to \$600,000.

Q. That has all been put back into the mine except the expense of the patent work and the office expense and an expense of about \$18,000 for the Aurora lode claim; is that right?

A. It has been, yes.

Q. I will ask you if at the time you were discussing the location of water here you did not estimate with Mr. Kinzie the amount or the probable head of that water—did it not become important for you to figure somewhat the contour lines of that creek—you were to figure out the contour lines of that creek so as to locate the amount of head that you would have on the creek?

Objected to as leading and suggestive and not proper redirect examination. Objection overruled. Exception. [1060]

A. It is important to get as much head as possible.

Q. You might be mistaken as to whether or not you did not have a conversation with Mr. Kinzie in which you figured from the geological map the contour lines and probably point of diversion?

Same objection. Overruled. Plaintiff allowed an exception.

A. I probably discussed all phases of it with Mr. Kinzie and looked over a great many maps with him.

(Testimony of F. W. Bradley.)

Q. I call your attention to exhibit 12 and the markings on Gold Creek there and ask you if that refreshes your recollection one way or the other as to any discussion you had with Mr. Kinzie about it.

Same objection. Objection overruled. Plaintiff excepts.

A. I have looked over a similar map to this with Mr. Kinzie; yes.

Q. You don't recollect just when that examination took place with him?

A. No, we have discussed it off and on for the last ten years.

Q. Judge Winn has asked you about the first Oregon location, mentioning the assessment work. I will ask you if any of the superintendents or other officers of the company have been authorized to abandon that claim?

Judge WINN.—We object to the question as hearsay, not proper redirect examination and not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. No, no one was ever authorized to abandon the Oregon claim.

Q. I will ask you to state why that was not included in the group of claims that were patented, the first Oregon?

Same objection. Overruled. Plaintiff excepts.

A. The amount of money available being limited, and from my point of view all that was necessary to protect was the [1061] right of way for the tun-

(Testimony of F. W. Bradley.)

nel—I only had the ground patented that covered the right of way for the tunnel.

(By Judge WINN.)

Q. You didn't consider, then, the water right of any consequence back there in those days?

A. I did consider it of consequence but knew we couldn't locate it until we had a way of using it.

Q. You have been all these years with those contemplations in view and you didn't locate the water until 1910, did you?

A. Didn't locate the water until we were ready to use it; no.

Q. In 1910? A. In 1910.

Q. Is your memory in any wise defective or have you a pretty good memory?

A. I have a fair memory—I may get off on details.

Q. After Mr. Shackelford refreshed your memory you remembered about some of these matters that took place between you and Mr. Kinzie in 1910, did you?

A. My visit in 1910 was a very short one. What took place between us then as compared with what took place between us on my many other visits I could not differentiate. I know this matter has been discussed by us every time I have been here.

(By the COURT.)

Q. The amount of money you have arranged for with this company is sufficient to complete this work up to the operation of this 200-stamp mill that Mr. Kinzie has testified about on the beach?

A. It is a definite contract; we don't get the stock

(Testimony of F. W. Bradley.)

until we have run the tunnel and built the mill. It doesn't make [1062] any difference to the Alaska-Juneau Company how much the performance of that contract costs, Ogden Mills and myself don't get our stock in the Alaska-Juneau Company until we have completed this work and completed the mill, and the contract is that the mill is to be of a certain definite capacity and crush so many tons per year.

Q. And you are to connect the tunnel, then, with the mill? A. Yes, by the tramway.

Witness excused. [1063]

[Testimony of M. S. Hudson, for Defendant.]

M. S. HUDSON, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Douglas Island.

Q. How long have you lived in Southeastern Alaska? A. About eighteen years.

Q. Where did you come from to Alaska?

A. From the State of Washington.

Q. What business have you engaged in since you have been in Southeastern Alaska, principally?

A. Well, up to the last three years I have been following mining.

Q. In what capacities have you mined?

A. Well, I have prospected and worked in the mines at different things.

Q. Been superintendent of any mines?

A. Yes, sir; the Nevada Creek.

Q. How long were you superintendent of that com-

(Testimony of M. S. Hudson.)

pany? A. About six years.

Q. Where are the mines of the Nevada Creek Company located?

A. They are located on Douglas Island—about six miles from here.

Q. Have you worked any properties as the owner of the properties? A. Yes.

Q. Where are they located, what properties?

A. They are located on Nevada Creek—above the Nevada Creek properties.

Q. What is the name of them?

A. They are called the Republic group.

Q. They are situated about the same distance from Juneau that [1064] the Nevada Creek properties are? A. Yes.

Q. Do you know the custom of miners in the Harris mining district and surrounding mining districts, situated in the vicinity of Juneau, in Southeastern Alaska, governing the acquisition of water rights?

(Same general objection to this testimony. Objection overruled and exception allowed.)

A. I know in a general way; yes.

Q. You may state what the custom is—under the custom of miners as you know it in the locality last mentioned has the owner of the banks of a stream of running water, any right to the use of the water by reason of such ownership only, without appropriating it and applying it to a beneficial use?

Objected to as leading. Sustained.

Q. You may state what rights the owner of the land situated on the bank of a running stream has to the

(Testimony of M. S. Hudson.)

use of the water in the stream, without appropriating it to a beneficial use—what rights, if any, he has?

A. Under the custom here and any place I have worked, the first person who takes and uses the water, why he has a right to it.

Q. Has the owner of the land on the banks of the stream any right to the water unless he uses it?

Objected to as calling for a conclusion of law. Objection overruled. Plaintiff allowed an exception.

A. My understanding has always been he did not—it is my understanding he did not have a right to it unless he uses it.

Q. How may the right to the use of water be acquired in this district, in the district referred to surrounding Juneau? [1065]

A. By the rights of using it. My understanding of the rights and the way I have seen them is that a person has a right to it who come in and use it, make actual use of the water.

Q. Regardless of where the line is situated or where the water is used? A. Yes, sir.

Q. What right has an appropriator of water, one seeking to acquire a water right to convey it to a place where it is to be beneficially applied and build ditches; canals and flumes across the unpatented mining claims of others, under the customs of miners?

A. As a rule, where it is necessary to cross their claims, as we have done down there, we go across wherever it is the most convenient place to get the water, because a good many times you can't always take it out of the creek—you have to take it on the

(Testimony of M. S. Hudson.)

sidehill to get a fall to it—you usually take the most convenient point to get it out of the creek.

Q. It makes no difference whether one happens to be on another man's mining claim or not, in using it?

A. Never made any difference to us around there in using it.

Q. You may state what, if any, ditches you have built in connection with your operations at Nevada Creek over the claims of other parties, quartz claims?

A. Down there we have taken the water out of Nevada Creek and taken it across what is known as the Corbus claims—take it and use it first to clean off our ground and afterwards run the compressor with.

Q. The Corbus claims, what are they?

A. Quartz claims—they belong to J. P. Corbus and Mr. Mills, I understand. [1066]

Q. Did you ask Corbus' consent or permission to cross it? A. No.

Q. Did anybody interfere with your crossing the claims? A. No.

Q. When was that?

A. It seems to me it was about fourteen or fifteen years ago the water was first used and it was afterwards used on the compressor, about six years ago.

Q. When was the ditch built?

A. The ditch was built fourteen or fifteen years ago and afterwards rebuilt, about 6 years ago.

Q. What, if any, other ditches did you build across the claims of others?

(Testimony of M. S. Hudson.)

A. We dug a ditch across what was known as the Spread Eagle, for use on our Republic group of claims.

Q. Who was the owner of the Spread Eagle at the time?

A. A man named Cleever—he is a prospector, an old-time prospector.

Q. A man that is familiar with the miners' rules?

A. As far as I know he is—he has followed it all his life.

Q. What creek did you take the water out of there?

A. It was a branch of Nevada Creek.

Q. Where was your dam situated with reference to the Spread Eagle claim?

A. It was situated on the Spread Eagle.

Q. Where was the water taken from with reference to the Spread Eagle claim?

A. There was a dam built on that and carried along on the Spread Eagle claim, on to our claim.

Q. When was that ditch and dam built?

A. Six or seven years ago. [1067]

Q. Did you ask Mr. Cleever's consent to take the water over his claim and build the ditches and canals of which you have spoken?

A. I don't know whether we asked him or not, but he was there at the time—he was living up there at the time we took it out. I don't remember whether we asked him or not.

Q. He didn't interfere with you? A. No.

Q. You never got any right from him? A. No.

Q. What, if any, other ditches did you build?

(Testimony of M. S. Hudson.)

A. That was 11.

Q. That ground of Cleever was located at the time you took the water and built the ditch? A. Yes.

Q. Do you know about other ditches that have been built in this district during the last ten or fifteen years across the claims of others? A. No.

Cross-examination.

(By Judge WINN.)

Q. When was that water right located for the Alaska-Treasure group of claims below here on Douglas Island?

A. The one they use there was located—I don't know how long ago—fourteen or fifteen years ago.

Q. It brings the water out of what creek?

A. Out of Nevada Creek.

Q. Does Nevada Creek flow through this property?

A. No.

Q. It flows through the property that is being worked by the water that is taken out of the creek?

A. Yes.

Q. Your claims extend down to sea level?

A. Not at that time they didn't.

Q. The group of claims that belong to that group now, that has been aided, take it down to the sea level? A. Yes. [1068]

Q. How far back on Nevada Creek was that water location made?

A. I don't know—that would be about a mile from the shore.

Q. Who made the location?

A. I don't know who made the location.

(Testimony of M. S. Hudson.)

Q. And you don't remember how long ago it was located?

A. No; as near as I know, it was 14 or 15 years ago.

Q. In bringing that water down you crossed some claims belonging to J. P. Corbus, who used to be superintendent of the Alaska-Treadwell Company?

A. Yes, sir.

Q. How many claims did he own?

A. He owned two claims and two fractions.

Q. When did he locate his claims?

A. I don't know what time they were located—some time, I think, in 1884 or 5. He didn't locate them at that time but the claimant located them at that time.

Q. Do you know what location Corbus claimed to own the claims under, or did own them under?

A. My understanding was he got on to them by purchase from the original locators.

Q. Did you ever examine the record to find out?

A. No.

Q. That is just hearsay. A. Yes.

Q. That group of claims now belongs to the Alaska-Treasure—those two Corbus claims? A. Yes.

Q. Who put the water across Corbus claim in the first place?

A. The men working down there—I don't know, I believe Hartrader and Thompson were two of the men. I don't know how many more.

Q. Were they working under you? A. Yes.
[1069]

Q. You don't know what arrangements were made

(Testimony of M. S. Hudson.)

with Corbus of your own knowledge to go across there?

A. No; I helped do some of the work there, but I don't know what arrangements they have made.

Q. Hartrader and this other man owned the property then? A. They were interested in it; yes.

Q. You don't know when that water was first located for this group of claims? A. No, I do not.

Q. Do you know how old any of that group of claims are that make up the Alaska-Treasure?

A. I don't know the date, no; but it is somewhere in 1884 or 5.

Q. You don't know but what the water was located at that time? A. No, I do not.

Q. I will ask you how long you were superintendent of the Alaska-Treasure group of claims.

A. About six years.

Q. Had there been any mill erected on it when you quit? A. Yes, twenty stamps.

Q. Where is the Republic group?

A. That is further back, further up on the same creek.

Q. On Nevada Creek? A. Yes.

Q. Did you use any water out of Nevada Creek to do any work on the Republic group?

A. Yes; we used that up there to clean off the ground in several places and do such as that—that is the only thing we used it for.

Q. Were you interested in the Republic group?

A. Yes.

Q. Did you use this water from Nevada Creek at

(Testimony of M. S. Hudson.)

the same point of diversion to work the Republic group you did the Alaska-Treasure group?

A. No. [1070]

Q. You diverted it at another point further up?

A. It was about three-quarters of a mile further up the creek.

Q. Than the point of diversion for the other group? A. Yes.

Q. Do you know who located that water right that went with the Republic group?

A. It never was located that I know of.

Q. Just going on the creek and taking the water out? A. That was all.

Q. When was the water first taken out to work this Republic group?

A. That would be about eight years ago.

Q. Had it been taken out at that point before you took it out? A. No.

Q. Were you one of the original locators of the Republic group? A. Yes.

Q. Did Cleever locate in on any of that group with you?

A. No, he was located before we located there.

Q. Where did he locate with respect to the Republic group?

A. The Black Diamond group was located first and he located adjoining them and we located adjoining him.

Q. Did you take the water across his claim?

A. We took it out from his claim, off his claim.

Q. He never made any objection to it? A. No.

(Testimony of M. S. Hudson.)

Q. He hadn't been using the water himself to work his claim? A. No, he never used it.

Q. Where is Cleever?

A. He died here a few days ago—four or five days ago.

Q. Did he own that claim up to his death?

A. Yes.

Q. How many years did you use the water on the Republic group? [1071]

A. About three or four years, that is, in the summer-time. Beginning in 1904, either 3 or 4—I think.

Q. And used it up to about 1907?

A. About that time—I don't remember just the exact time.

Q. Do you know whether or not Cleever kept up his assessment work on his claim, up to his death?

A. He kept it up until last year,—I don't know about last year, but he has kept it up right along.

Q. He just owned one claim up there?

A. He owned two at that time.

Q. Did they border on the creek?

A. They crossed the creek—the creek runs through the centre of his claims.

Q. This matter of using that water from the creek on this Republic group, for what purpose did you use it?

A. Covering the bench and opening up to determine where the ledge ran and how wide it was.

Q. There never has been any mill erected on that property? A. No.

(Testimony of M. S. Hudson.)

Q. So you put the water to a contemplated use at that time? A. Yes, sir.

Q. You never located it or undertook to take it out of that creek for the purpose of running a mill on that property.

A. No, I don't think we located it at all.

Q. How far did you take it out of the creek to do this sluicing?

A. Sometimes we were on the hill for a quarter of a mile, probably a little more than that and then taking it out at different points along there.

Q. You know you didn't take it out of Nevada Creek to *use the* mill on the Alaska-Treasure Company's property until there [1072] was a contract with Corbus to buy that property?

A. Not for the mill; no.

Q. You first contracted with Corbus to buy his property—or do you know when that contract was made?

A. I believe that contract was made later.

Q. Who was it made by?

A. Arthur Pearse and some of those people—I don't know who made the contract.

Q. You know it was contracted sometime about the time you were putting in that mill and afterwards the deal was consummated to take it over the claims—the contract itself was after the mill was put up? A. Yes, sir.

Q. Did you see the contract?

A. I don't remember whether I did or not.

Q. You don't know when Arthur Pearse and these

(Testimony of M. S. Hudson.)

people first commenced to dicker with Corbus in San Francisco to get that property?

A. Arthur Pearse, you know, didn't have anything to do with the claims until after the mill was up.

Q. Do you know when Mr. Stone commenced to make the deal with them, with the Corbus people?

A. I don't know that he ever made a deal with them at all.

Q. Who did make the first deal with them?

A. That was made after the time Arthur L. Pearse had taken hold of it.

Q. Wasn't Arthur Pearse on the property before the death of Colonel Stone?

A. He was on the property but wasn't interested in it.

Q. How do you know he was not? [1073]

A. He was not interested, I know, then.

Q. You don't know what interest he had with old Colonel Stone?

A. No, I know he didn't have any interest in the company,—I don't know what interest he might have with Stone.

Q. Stone was largely interested in the company?

A. Yes.

Q. You don't know what arrangements were made between him and Stone as to the Stone interest?

A. No.

Q. Now, this is all the experience you have ever had with the use of water in Alaska? A. Yes.

Q. You didn't come here until what year?

(Testimony of M. S. Hudson.)

A. To Alaska?

Q. Yes.

A. Why, I think it was '93—I am not sure about the year.

Q. You know nothing about any local miners' rules and customs?

A. Only what I happened to come in contact with.

Witness excused. [1074]

**[Testimony of R. A. Kenzie, for Defendant
(Recalled).]**

R. A. KENZIE, recalled:

(By Mr. HELLENTHAL.)

Q. You are the general superintendent of the defendant company? A. I am.

Q. What other companies, what other mining corporations in Southeastern Alaska do you sustain a similar relation to?

A. The Alaska-Treadwell, the Alaska-United and the Alaska-Mexican.

Q. How many stamps has the Alaska-Treadwell Mining Company? A. 540.

Q. How many the Alaska-United? A. 240.

Q. How many the Alaska-Mexican? A. 120.

Q. What other mills are there in Southeastern Alaska?

A. There are three mills—Berner's Bay.

Q. How large is that mill?

A. The largest mill there is 40 stamps; and 10 stamps and a twenty-stamp mill.

Q. These mills in Berner's Bay belong to whom?

A. They belong to three different companies—one

(Testimony of R. A. Kenzie.)

is known as the Nowell Company and there are two others. I won't be positive as to the number of **stamps**—thirty or forty in one and ten in each of the others, I believe. Then, there are two mills on Jackson Creek, the Juliana Mill with ten stamps and the **Indian-Alaska mill**.

Q. Are any of those mills you have last referred to operating now? A. No.

Q. How long since they have been operating?

A. The Nowell mill ran ten stamps for experimental purposes but I don't know when they ran—it was ten or twelve years [1075] ago since it was run.

Q. How about the others?

A. The Juliana mill was running about six years ago. Then, coming down, I think, the next mill you come to is the Eagle River mill. I think that is 20 stamps. I have never been there; that is in operation, I think.

Q. What other mills are there in southeastern Alaska mines that are in operation?

A. There are some abandoned mills between here and there, some of the old Nowell mills. Coming down to the vicinity of Juneau there is the Perseverance mill.

Q. How many stamps?

A. One hundred stamps. The Alaska-Juneau has one 30 stamp and one five-stamp mill. Coming down further there is the Red Mill, one of the old Nowell mills; that is practically abandoned; then the Ebner mill and the five-stamp mill.

Q. The Ebner mill, is that operated now?

(Testimony of R. A. Kenzie.)

A. No; that has not been operated for the last three or four years. Then, there was a mill below here, not counting the mills on the Island and at Nevada Creek. There is a mill at Snedeshan.

Q. How large a mill at Nevada Creek?

A. I believe Hudson testified a 20-stamp (twenty-stamp) mill; and there was a stamp mill at Sumdum; and the one at Snedeshan.

Q. They have been abandoned?

A. Yes; there is a small mill on the Copper Mountain, either three or five stamps; they are operating a little high grade property there.

Q. You have named all the quartz-mills in South-eastern Alaska you know of? [1076]

A. No, there are a few others, one at Funder Bay and one at Sitka—all the principal mills.

Q. Is the one at Funder Bay in operation?

A. No, it has not been used in ten years.

Q. And the Sitka mill?

A. I don't know about that—there is one at Chicagoff—that is in operation.

Q. How large is that?

A. I think they enlarged that to a ten-stamp mill; it was a very small mill.

Q. How long have you been in Alaska, did you say? A. Ten years.

Q. During that time you have either been assistant superintendent or general superintendent of the various companies you have referred to—the Treadwell, the Alaska-United, the Alaska-Mexican and the Alaska-Juneau? A. Yes, I have.

(Testimony of R. A. Kenzie.)

Q. Do you know the custom of miners in the Harris mining district and surrounding mining districts and such mining districts as surround the town of Juneau in Southeastern Alaska governing the acquisition of water rights?

(Same general objection to this line of testimony. Overruled and exception allowed.)

A. I do.

Q. Are you familiar with the topography of the country comprising Southeastern Alaska?

A. In a general way; yes.

Q. Are you familiar with the climatic conditions in Southeastern Alaska? A. I am.

Q. And the conditions of the soil generally?
[1077] A. Yes, in a general way.

Q. What is the topography of the country as to being rough or otherwise?

A. It is very precipitous and rough along the coast line.

Q. Is there any soil suitable for agricultural purposes?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I believe so in isolated spots. They don't comprise any very considerable percentage of the total area in Southeastern Alaska.

Q. Are the climatic conditions such that vegetables and fruit and grains will ripen in Southeastern Alaska?

(Testimony of R. A. Kenzie.)

A. Some vegetables will—most fruits and grains will not.

Q. What vegetables will ripen?

A. Cabbages, potatoes, turnips and things of that sort.

Q. Can't grains be raised in Southeastern Alaska?

A. I have never known of their being raised.

Q. Is the country suitable for stock-raising?

A. I should say not, on account of the moisture.

Q. Is there any industry carried on in Southeastern Alaska, any productive industry, other than mining?

Same objection. Objection overruled. Plaintiff excepts.

A. I should say mining is the principal industry—fishing.

Q. Outside of the salmon and halibut fishing?

A. There are some small ranches on the bars. I only know of 2—Tom Knutson's and William Lund's. They don't amount to much.

Q. Under the customs of miners in the localities referred to, Southeastern Alaska and the mining districts surrounding Juneau more especially, has the owner of lands situated on the banks of running streams any right to the use of water [1078] in those running streams by reason of such ownership, under the customs as you know them?

A. By appropriation; yes.

Q. I mean by reason of the ownership of the banks independent of the appropriation?

A. No, I should say not.

(Testimony of R. A. Kenzie.)

Q. How can a water right be acquired in South-eastern Alaska under the miners' customs as you know them?

A. By appropriation and use. The first step is usually to post a notice stating the number of inches or cubic feet of water or quantity of water to be diverted the point of diversion, usually in the vicinity of the notice posted and the notice goes on to state the method of conveying the water and the point of intended use.

Q. Does it say anything about the purpose the water is to be used for? A. Yes.

Q. Then, what is done with the notice?

A. Then the work of actually appropriating the water, that is, conveying it and putting it to a useful purpose must be started and continued with all due diligence. You can't take up a water right and let it stand and come back in two or three years and continue the work—the mere fact of abandoning it, I believe, works a forfeiture.

Q. What would work a forfeiture?

A. Not using due diligence in applying the water so diverted from the stream.

Q. What do you do with the notice, if anything, after posting it?

(Same general objection. Objection overruled and exception allowed plaintiff.)

A. The notice is recorded in the nearest recording office, which is here in Juneau. [1079]

Q. In about what length of time is that usually done under the custom?

(Testimony of R. A. Kenzie.)

A. As soon as possible—usually within ten days, I would say, from ten to twenty days.

Q. Under the local customs as you know them that obtain among miners in Southeastern Alaska and those operating mines, what rights, if any, has one seeking to appropriate water and acquire a water right by appropriation to build ditches, flumes, canals, aqueducts, dams and other appurtenances of those ditches over and across the mining claims of others, quartz or placer?

A. The custom is to extend the ditches over property belonging to others—the only restrictions I know of is the restriction of damages that you cannot interfere with a man's working or if you cause him any damage, you allow him for that damage so done in conducting the ditch or flume across his property.

Q. What is the custom among miners with reference to the relative rights of the ditch owner and the claim owner, if the claim is located first and the ditch located across the claim afterwards—what are the relative rights of the parties?

A. The owner of the ditch has a right to cross the claims.

Q. But if the mine is located first and the ditch constructed afterwards, who has to take care of the water, that is to say, if the mine owner desires to mine, what is the duty of the ditch owner?

A. The ditch owner has to take care of the property.

Q. And if the ditch is located across public domain

(Testimony of R. A. Kenzie.)

first and the mine located afterwards over the ditch, then what are the relative rights of the parties?
[1080]

A. The man locating the claim, as I understand it, has to take care of the ditch—he can't allow the work to interfere with the ditch or flume passing over his property.

Q. Does the construction of the flume or ditch across the Parish claim by the Alaska-Juneau Company from the point of diversion, so long as the ditch and flume remain on the Parish claim, in any wise injure or damage the Parish claim assuming that would be a valid location?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I think it does not.

Q. It does not damage it? A. It does not.

Q. Would it in any wise interfere with the work and operation of the mine found upon the Parish claim, if the mine should happen to be found there?

Same objection. Objection overruled. Plaintiff excepts.

A. I think it would not.

Q. It would not interfere with the work?

A. No, sir, it would not.

Recess to 1:30.

Mr. SHACKLEFORD.—I desire to withdraw Mr. Kinzie for a moment and call Mr. Marks.

By the COURT.—Very well. [1081]

[Testimony of Antone Marks, for Defendant.]

ANTONE MARKS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. Where do you reside?

A. Douglas Island.

Q. How long have you lived in this part of Alaska?

A. Nearly thirty years. Came here in 1881, the first time.

Q. What have you been engaged in?

A. Mining most of the time—all the time.

Q. I will ask you if you are acquainted with the custom of miners in this Juneau mining district with reference to the appropriation of waters for mining purposes?

(This testimony is subject to the same general objection, which is overruled and exception allowed.)

A. Some, yes.

Q. State what the custom is with reference to making a water appropriation—how do you start the appropriation?

A. Well, the custom I have been used to, a man would have his ground cleaned for work and he has got to go to work to build his ditches.

Q. What about filing notice?

A. He has got to file a notice that he is going to cut a ditch, I suppose, and fetch water from most anywheres at all, wherever he can fetch it to the ground, to work with.

(Testimony of Antone Marks.)

A. Are you acquainted with the custom with reference to going on other claims where water is flowing through unpatented mining claims—where the water is flowing and not all used and taking it over and across other claims for the purpose of using it on your own claim?

A. I have done it myself. [1082]

Q. State to the Court what that custom is about going on other creek claims to get the water.

A. I can't explain it like I ought to. The first thing is to go to work and have a place to take the water to and fetch a ditch over to the ground and see it don't do any damage to any man's property.

Cross-examination.

(By Judge WINN.)

Q. You have talked to Mr. Hellenthal and Mr. Shackleford about what you were going to testify to before you came on the stand? A. No, sir.

Q. Did you talk to Mr. Kinzie or Mr. Bradley?

A. No, I don't know Mr. Bradley if I see him now—never spoke to him.

Q. You have not talked to anybody about this custom for three or four or five days at all?

A. No, I did not. I didn't know about it until last night. A man came in and told me to come over. I don't know who he is, either—if I saw him now I would know him.

Q. What are you doing in Douglas?

A. I am doing nothing now.

Q. Did you ever work for the Treadwell?

A. No, never did.

(Testimony of Antone Marks.)

Q. Where do you own any mines?

A. Nevada Creek.

Q. How many claims have you got up there?

A. I have one claim there.

Q. Who is interested with you—Mike Hudson?

A. Yes.

Q. Is that the Republic group? [1083]

A. No, that is the Alaska-Treasure group.

Q. Do you own any claims that belong to the Alaska Treasure Company? A. I do.

Q. Have you sold them to that company?

A. I did not.

Q. The Alaska-Treasure Company is a corporation that owns some claims over there?

A. I suppose they do but I didn't sell my interest.

Q. What do you mean—you own some claims with the Alaska-Treasure Company?

A. I own an interest in the mine.

Q. Is that the property you have?

A. Yes—I own an interest in the mine.

Q. You own stock in the corporation?

A. That is what I do—I own the claims in it.

Q. You never did deed them away to the company?

A. No, deeded nothing to anybody—I give them an option on it.

Q. They own an option of it? A. Yes.

Q. Where did you take water from to work your claims with?

A. We use it from the Corbus and Duncans and our own water.

Q. When did you use the water, how long ago?

(Testimony of Antone Marks.)

A. I guess about three years ago myself.

Q. Did you use it on the claims after you gave the Alaska-Treasure Company an option?

A. No, not since that.

Q. The water used on those claims is the same water that Mike Hudson testified about this morning?

A. I presume it is. I don't know, but I know I used Corbus water and used our own water for prospecting, cutting ditches. I worked for three months.

Q. What do you mean by using Corbus water?
[1084]

A. It was easy for him to fetch it over.

Q. The Corbus property went into the Alaska-Treasure Company property too?

A. Yes, I guess it did—I understood so.

Q. Whose claim did you go on to take the water off from, whose mining claim in the creek?

A. Edwards claim, they used to call it—Edwards & Filsofer.

Q. Where are they?

A. Right alongside of our claim—they are both dead.

Q. You used a dead man's water? A. Yes.

Q. That is the claim you went on? A. Yes.

Q. He was not there to raise any row with you?

A. No, he was not. Corbus was there and Duncan, they owned the property there when I was there.

Q. That is the Corbus property?

A. When I worked it; yes.

Q. Do I understand the Filsofer and Edwards

(Testimony of Antone Marks.)

property is the property that Corbus got?

A. Yes.

Q. That is the only water you have ever used in Alaska?

A. I used water up the Basin and different places.

Q. How long ago did you work up there in the Basin? A. Twenty-nine years ago.

Q. Did you placer mine up there? A. I did.

Q. Did you ever build any ditches up there?

A. I have—not a very big ditch, just enough to get water for the little ditch.

Q. Were you *here were* had up there in the Basin between the Placer owners and the owners of quartz claims? A. No, sir; I was inside.

Q. You have told the Court all you know about the water business? [1085]

A. I have told the Court all I know about the water business.

Q. You didn't build any mill on the property?

A. No.

Q. Did you put a sluice-box in or how did you take it out of the creek?

A. Put a sluice-box in.

Q. And took it out and used it on your property and let it run back into the creek?

A. That is all.

Q. How many years did you use it that way?

A. Two seasons.

Q. Corbus & Duncan didn't raise any kick about it at all? A. No.

(Testimony of Antone Marks.)

(By Mr. SHACKLEFORD.)

Q. What year was that when you were working on this claim and taking the water from the Corbus claim? A. It was five or six years ago.

Q. How old are you? A. About 70.

Q. You have not been engaged in mining operations for the last two or three years?

A. No, I have not.

(By Judge WINN.)

Q. It was six or seven years ago you used that water? A. Six years ago.

Q. Duncan was dead then too? A. Yes.

Q. And Corbus was down below?

A. I think Corbus was here at the time—I know that he quit but I don't know when.

Q. Corbus hasn't been in the country for several years? A. No, I have not seen him.

Q. Duncan was not objecting then either?

A. No, none of them.

Witness excused. [1086]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

Mr. KINZIE, recalled.

(By Mr. HELLENTHAL.)

Q. I will ask you to indicate the quartz properties that are actually in operation in Southeastern Alaska.

A. The Eagle River, the Perseverance, the Alaska-Juneau, the Alaska-Treadwell, the Alaska-Mexican, the Alaska-United,—that is all the mills I know of that are now operated.

(Testimony of R. A. Kinzie.)

Q. Are there any placer properties you know of that are in operation at the present time?

A. Yes, they are operating in the Basin what is known as the Nowell placer—that is operating now. I know of no others.

Q. I hand you exhibit 50. State what it is in a general way.

A. It is an outline map, showing the outline of various mining claims in the vicinity of Juneau on both sides of Gastineau Channel, also showing a number of the creeks and ditches as they exist.

Q. During the time that you have been general superintendent or assistant general superintendent of the Alaska-Mexican mine what, if anything, has that company done in the way of constructing ditches and acquiring water rights in the neighborhood of Juneau?

A. They have constructed one ditch, a ditch about half a mile long.

Q. From what creek is the water diverted by means of that ditch?

A. The water is taken out from a small draw just back of the—I think it is called O'Brien Creek. I don't remember the exact name. I think that is the draw, and continues by that point by the Mexican penstock and over to the ditch of the Alaska-United Co., the Ready Bullion mine.

Q. Is the intake of the ditch you have last referred to on the mining claim of any other than the Alaska-Mexican Company? [1087]

A. It is—on ground, I think Captain John John-

(Testimony of R. A. Kinzie.)

son at present claims it.

Q. Was that ground claimed and occupied at the time the ditch was being constructed? A. It was.

Q. Do you know the name of the claim?

A. No, I do not.

Q. Along whose ground, if anybody's, was that ditch constructed along its course?

A. That was the only ground that ditch crossed.

Q. For how long a distance was it in this ground of Johnson?

A. There is a number of claims in there—I should say on ground other than the public domain it is on about 800 feet—it runs diagonally through the corners.

Q. And the water itself is taken from that claim?

A. It is; yes.

Q. When was that ditch constructed?

A. That ditch was constructed about four years ago.

Q. Did you obtain the permission of the owners of the mining ground there to take the water off of that ground or to cross their claims with ditches and flumes? A. I did not.

Q. Was there any permission ever obtained?

A. It was not.

Q. Were you ever interfered with in the construction of that ditch, in the acquisition of your water right or the appropriation of your water?

A. No, we were not.

Q. That was four years ago?

A. About four years.

(Testimony of R. A. Kinzie.)

Q. What, if anything, has the Alaska-Treadwell done while you have been connected with it, in the matter of constructing ditches and flumes and acquiring water rights? [1088]

A. The Alaska-Treadwell has extended part of their main system and have also built a new ditch from a point on Paris Creek above the Bear's Nest mine.

Q. Does that ditch cross the mining ground of any others than the Alaska-Treadwell Company?

A. It does; it crosses part of the Bear's Nest ground and part of the Jersey City—I think they call it Jersey City.

Q. On whose ground is the water taken out?

A. I think the water is taken out there on the public domain.

Q. Are those last two ditches you have delineated on this map, No. 50?

A. No, they are not; there are a number of ditches not on here.

Q. Put on there the Alaska-Mexican ditch—mark it “Alaska-Mexican ditch.”

A. This is the new ditch from Paris Creek I have just mentioned.

Q. Mark the Treadwell ditch and put on the date of construction.

A. That was built last year—1910; the Mexican ditch is about here.

Q. Does the property of the Bear's Nest show on that plat? A. Yes, sir; it is marked Bear's Nest.

(Testimony of R. A. Kinzie.)

Q. Does the property of Captain Johnson show on there?

A. No, it does not—in a general way, it would be about there.

Q. Did you mark that Johnson property?

A. Yes.

Q. Have you got the ditch on there?

A. Yes, the ditch shows on there.

(Witness marks the ditch—Mexican ditch with date of construction.)

Q. Does it show the draw out of which the water is taken?

A. Yes, it is an extension of an old ditch—the draw comes in through here some place—right across the property. [1089]

Q. What other ditches, if any, have the Alaska-Treadwell Company built during the time it has been under your superintendency?

A. It simply has been extending ditches from the west end of their main ditch system.

Q. Any of those on mining claims of others?

A. No.

Q. Does the Treadwell own this water power at Sheep Creek? A. Yes, sir.

Q. What, if any, ditches did you build in that connection?

A. We built the ditch and flume line from our intake on Sheep Creek to our penstock.

Q. Does that cross anybody else's property except the Treadwell?

(Testimony of R. A. Kinzie.)

A. It starts on property belonging to a man named Dolan.

Q. And runs how far over it?

A. I should say 50 to 100 feet, maybe a little more—the balance of the ground there we own ourselves.

Q. Has the Alaska-United built any ditch under your supervision?

A. They have. They have built a ditch from Bullion Creek to their penstock, just above the Ready Bullion mill.

Q. Is that ditch indicated on exhibit 50?

A. No, it is not.

Q. Please put it on.

(Witness does so.)

A. I have marked it Ready Bullion ditch.

Q. What date was that ditch built?

A. That was built four or five years ago. I will put the date of construction on approximately.

Q. On whose property does that ditch start?

A. That ditch starts on the property of the Yakima Gold Mining Company.

Q. Is that property owned by the Alaska-United Company? [1090] A. It is not.

Q. What creek does it take the water at?

A. Bullion Creek—on the property of the Yakima people. It crosses over the peat flats to a point just above the road to the Bullion mill.

Q. Does it cross any other mining claims, other than the Yakima?

A. There are some claims in there, but I don't know whom they belong to.

(Testimony of R. A. Kinzie.)

Q. Are they quartz or placer?

A. They are located as quartz claims.

Q. Were they located and subsisting claims at the time the ditch was constructed?

A. I noticed the stakes at the time we built the ditch.

Q. Did you ask permission of anybody in order to take the water over the Yakima property?

A. I did not.

Q. Did anybody oppose you in doing so?

A. Never have; no, sir.

Q. Did you ask anybody's consent to cross over intervening mining claims with that ditch?

A. No.

Q. Did anybody oppose you in doing so?

A. They did not.

Q. Did you ask the consent of the Bear's Nest people in crossing their ground?

A. We did not.

Q. Did anybody oppose you crossing that ground?

A. No.

Q. What, if any, other ditches were acquired by any companies with which you have been connected in Alaska during that supervision?

A. Those are practically all the ditches that have been built by any company I have had anything to do with.

Q. Do you know anything about the ditch at Berner's Bay? A. I do. [1091]

Q. Does that cross mining claims of others than the Berner's Bay Company? A. It does.

(Testimony of R. A. Kinzie.)

Q. Do you know the names of the parties whose ground it is crossing?

A. I am not positive—the intake of the ditch, I believe, belongs to the Portland & Alaska. I won't be positive. It is the same people that own the mill and cabin on the shores of Lynn Canal; the intake of the ditch is on property of some one other than the Berner's Bay Company.

Q. From what creek do they take the water?

A. I think that creek is called Opal Creek—I won't be positive of that name.

Q. Do you know anything about the Jualin Company's ditch? A. I do.

Q. Does that cross the mining ground of others than the Jualin Company?

A. It does; it starts on property other than that owned by the Jualin Company.

Q. Do you know the names of the parties owning the property?

A. I think it is called the Indian-Alaska—something of that sort.

Q. That is where the water is taken out of the creek? Their dam is on property other than the Jualin Company property? A. Yes, sir.

Q. How far does it extend across property other than the Jualin Company's property?

A. Not for a very great distance. I couldn't say positively how far it is—I know it is not very far.

Q. Do you know anything about the Eagle River ditches?

A. Not personally, no—not of my own knowledge.

(Testimony of R. A. Kinzie.)

Q. Anything about the Perseverance ditch?

A. Not personally. I have never gone over the ground personally. [1092]

Q. Do you know anything about the Alaska-Juneau ditches? A. Yes, sir.

Q. Are they on property other than that of the Alaska-Juneau?

A. Their intake is on property other than ours.

Q. The intake is on whose property?

A. The property belongs to the Oxford Mining Company—that is some of the old International Trust Company property, formerly owned by the Nowells.

Q. How far does it extend across that property?

A. Only a short distance.

Q. Have you any record in your office or any consent or license to go upon that ground to take the water off? A. I have never seen it.

Q. Does that ditch show on this map?

A. Yes, both the ditches are here.

Q. Both the ditches are marked Alaska-Juneau ditch?

A. Yes, sir; they both start on the same property and both cross the property of the Oxford Mining Company. We take the water out on the property of the Oxford Mining Company.

Exhibit 50 is admitted in evidence.

Q. The main Treadwell ditch—is that delineated on this map?

A. Only a short part of it here—the ditch extends all the way up Douglas Island and around the north-west end.

(Testimony of R. A. Kinzie.)

Q. How long is that ditch?

A. The ditch is approximately 20 miles long.

Q. Does it cross the mining claims of people other than the Treadwell? A. Yes, sir.

Q. How many—do you know?

A. No, can't say positively. I know there is Mr. Shattuck owns some claims along that dotted line and Mr. Tracy and then some men working on the ditch had some claims toward [1093] the end of the island. I don't know how many.

Q. Does it cross the Bear's Nest property?

A. Yes, sir.

Q. That is an old mining property?

A. Yes, sir.

Q. What other claims does it cross—the main ditch?

A. I think no other claims except our own.

Q. What is the character of the properties that you have referred to, including the Alaska-Mexican, United, Treadwell, Juneau and Perseverance properties and all those other properties—whether it is low or high grade ore?

A. I think they would be classed as low-grade ore.

Q. Can they be worked to advantage unless they are operated by means of water-power?

A. I don't think so.

Q. Can these properties acquire water-power? I speak especially of the Alaska-Treadwell and Mexican, from sources other than those they are now acquiring them on Douglas Island. A. No, sir.

Q. And without the water rights connected with

(Testimony of R. A. Kinzie.)

the ditches, as I understand you, the properties on Douglas Island could not be worked?

A. I doubt very much whether they could be worked.

Cross-examination.

(By Judge WINN.)

Q. You say the main Treadwell ditch was here when you came here? A. Long before I came.

Q. The part that has been constructed since you had anything to do with the property over there has been mainly an extension of it still further on up the island to gather up more water? [1094]

A. Part of the work has been done there and part has been done directly back of the works in an area there, say, three miles long and half a mile wide.

Q. Just back of which one of your mills over there?

A. That would cover all the mills, that area.

Q. The work you did back of your workings over there was that to get under the hillside and pick up more water? A. It picked up more water.

Q. This Treadwell ditch, as I understand it, depends largely for water upon the water that comes from the hillside from the melting of snow and small streams, does it not?

A. It does, supplemented by a dam.

Q. Back of your works there, what creek, if any, do you tap?

A. We tap two creeks,—one is known as Paris or Mill Creek and Bullion Creek.

Q. That work has been extended up to those creeks

(Testimony of R. A. Kinzie.)

since you came here? A. Yes, sir.

Q. That is where Johnson's property is?

A. No; Johnson's property, I should say, is about halfway between Paris Creek and Bullion Creek—it is one of the Cordwood Jim properties.

Q. It is not the Cordwood Jim property down near the beach?

A. Oh, no. That claim, I should say, would be back of the beach 2,000 feet or 2,500 feet—a little more than that,—it would be close to 3,000 feet.

Q. That is not the property that is in contest between your company and Johnson?

A. No, that is on the beach.

Q. Do you know when Mr. Johnson came to that property?

A. No, I do not. I don't know whether he ever owned it or not—I am simply told he did. [1095]

Q. Cordwood Jim is dead? A. Yes, sir.

Q. Do you know whether the assessment work has been kept up on the property or not?

A. It has not during the last few years.

Q. It is abandoned property?

A. It is now; yes.

Q. What other claims on those works back of your property do any of your ditches cross?

A. They cross the Yakima; they cross these unpatented claims or located claims—the stakes are in the ground yet. I don't know who own them.

Q. What is the Yakima property?

A. It is now patented—I don't know who owns it.

Q. All you know about there being other claims

(Testimony of R. A. Kinzie.)

there, you saw stakes in the ground?

A. I saw the stakes on the ground and was told. I didn't look up any notices to see if they were recorded; there was assessment work done, but I can't say whether the assessment work has been kept up personally or not—the assessment work has been kept up this year.

Q. When was the Yakima patented?

A. I don't know—in fact, I won't be positive it is patented. It has been surveyed for patent I should judge from the stakes.

Q. How many claims are there up there?

A. Eight or ten.

Q. Is it on any creek?

A. It lies just east of Bullion Creek.

Q. Bullion Creek is a small creek?

A. No, it is one of the principal sources of water we have.

Q. Where does that flow into Gastineau Channel?

A. Just below the Mineral Queen claim, at the east end of our property. [1096]

Q. Down below the Mexican mill?

A. Beyond the Mexican mill.

Q. That is some of the water that has been acquired since you have been here?

A. That is some of the water that has been taken up and put to use since I have been here, yes—it is surface water; we have a number of other ditches tapping the same creek further up.

Q. Did you locate the water on that creek?

A. I appropriated it.

(Testimony of R. A. Kinzie.)

Q. Had it been previously located?

A. Not that I know of.

Q. You don't know whether it had been previously located by your company or not?

A. At the time we took it up? No, I think not—it is surface water and only flows part of the year.

Q. What about the creek—had that been located?

A. Yes.

Q. When did you locate that?

A. Our upper Treadwell water right is one of the oldest water rights over there; that takes it up about half a mile, maybe three-quarters of a mile above that point.

Q. What about that Bullion Creek water location as compared with the Yakima locations?

A. I don't know of their having any water rights—they never had a mill.

Q. What about their lode locations—do you know when they were located?

A. No, I do not—not the date.

Q. When was it you constructed across the Johnson property and the Yakima property?

A. That ditch doesn't cross any land belonging to Johnson—that [1097] I know of. That is another ditch—that is a lateral ditch.

Q. When did you construct the ditch across the Yakima property?

A. That is about five years ago, perhaps a little more—no, it is hardly that; between four and five years ago.

Q. And you took the water out up above the Ya-

(Testimony of R. A. Kinzie.)

kima property? A. No, on the Yakima property.

Q. Did you ever locate that water?

A. We did; that was located, I should say, the notice was posted just before we started working there—I should say four or five years ago.

Q. You didn't know at that time where the owners of this property were or who they were, only you knew it was the Yakima property?

A. I knew in a general way where they were. I believe their headquarters were in Seattle.

Q. The big Treadwell ditch that traverses the mountain-side over here on the island, the major portion of that big ditch was constructed before you came here?

A. Long before I came here—it was built when I came here.

Q. The part you have extended around up the beach here, whose ground did the extensions of your ditch extend over?

A. Well, part of the ditch, as I said, was on the public domain and our dam site and reservoir sites were on ground belonging to us.

Q. And the extensions then were either over Government land or ground belonging to your company?

A. At the northwest end of the island; yes.

Q. Have you told all about the different branches of the Treadwell ditch and its feeders, etc.?

A. No, there are numerous feeders. [1098]

Q. All the way up to your tunnel there are feeders? A. Yes, sir; there are.

(Testimony of R. A. Kinzie.)

Q. You said something about the Shattuck property that that ditch crosses. Where is that property?

A. That property is between Lawson Creek and Eagle Creek.

Q. It was across that property when you came here? A. Yes, sir.

Q. Is there any other property that your main Treadwell ditch crosses that don't belong to your companies?

A. There is a point on Slate Creek. I understand there was property belonging to Mr. Nowell, but I don't know whether that is true or not—I never looked into it.

Q. Did that main ditch cross the Bear's Nest property when you came here?

A. Yes, the ditch has been widened out, enlarged, since I have been here, on the same property the old ditch was enlarged. That is the west extension of the ditch.

Q. Whose other properties were crossed by any portions of it besides those you have mentioned?

A. There is a lateral ditch coming down from Parish Creek, down and over the Bear's Nest ground—that goes over a corner of the Jersey City.

Q. Was that ditch there when you came here?

A. No, it was not—that was built last year. I think it went over what is called the Jersey City. I say that simply from what the men told me—they said one of the claims extended that far. Mitchell told me that; he is here now.

(Testimony of R. A. Kinzie.)

Q. Where is the headquarters of the Jersey City Company? A. I think it is in Juneau.

Q. What is the name of the company? [1099]

A. I think it is called the Jersey City group. I don't know whether it is a company or not. That is all I know about it. I think Mike O'Connor is one of the owners; Jim Mitchell is an owner; Cordwood Jim was an owner, and I think there is a man in Juneau who is an owner.

Q. Is that property abandoned?

A. No; they are working that property each year.

Q. Keeping up the assessment work?

A. They are doing more than keeping up the assessment work. They sank a shaft and ran a number of drifts.

Q. What creek do you tap with that ditch?

A. Paris Creek.

Q. Does Paris Creek run across O'Connor's property?

A. I think at a point further up. I have never been around the property.

Q. What sized creek is that Paris Creek?

A. It drains that Basin on the west side of Mt. Jumbo—it is a creek, I should say, a couple of miles long.

Q. Is there any other property connected with this ditch? With the Treadwell ditch and its feeders? A. None that I know of.

Q. You said something about the Sheep Creek property—that is the water rights that are in litigation in this court?

(Testimony of R. A. Kinzie.)

A. I didn't know the water rights were in litigation. Yes, there are a number of suits, I remember now.

Q. When did you go down there to install that plant of Sheep Creek?

A. That plant was installed last year—started the year before and finished last year.

Q. You have your pole lines down Gastineau Channel and across the channel up here above the town, conveying the power over [1100] to your mill? A. Yes, sir.

Q. It crosses the channel and conveys the power over to the Treadwell mill?

A. Yes, I understood you to say Treadwell.

Q. You don't know what, if any, agreements exist between the Indiana Company and the Jualin Company about crossing any of their property?

A. I do not.

Q. Do you know whether or not the Indiana Company is still keeping up the assessment work on their property or not?

A. I have not been there for five or six years—I don't know whether they were at the time I was there.

Q. You don't know anything about the agreements, if any existed, between any of these other companies you testified concerning on your direct examination except those companies that you have been superintendent of?

A. I know the physical conditions, that is, I have been over the ground.

(Testimony of R. A. Kinzie.)

Q. But you don't know anything about the contract or agreement under which or by which any of the property was crossed with ditches and flumes other than the property of which you are superintendent? A. I do not.

Q. You testified concerning a water right that belonged to your Mexican mill—that is part of the Mexican?

A. Yes, part of the Mexican system; there are three distinct systems of water.

Q. Whose property did you cross with your flume-lines to convey water to the Mexican mine?

A. We crossed a number. [1101]

Q. What water did you take, from what creek?

A. From three creeks—Ready Bullion, Bullion Creek and the intermediate creek. I have forgotten the name of it now.

Q. Your Ready Bullion location water right is one of the oldest locations over on the island?

A. Yes; Ready Bullion creek is one of the oldest locations on the island—that is the Mexican water right.

Q. Over what individuals' property did you cross with that?

A. On the creek itself there are some claims—I have not been there in four or five years now.

Q. Was that waterworks in operation when you came here? A. It was.

Q. Then you don't know, individually or personally, by what agreement or right these people gave permission to them to convey the water originally

(Testimony of R. A. Kinzie.)

across their claims?

A. I do not. I simply know it is on their property.

Q. What other water is conveyed to your Mexican mill?

A. The only addition to the Mexican mill that is on property other than our own is the lateral ditch I spoke of on direct examination. It takes up from this small draw between Paris Creek and Bullion Creek.

Q. Had the water been appropriated from there when you came here? A. It had not.

Q. That is one of the new extensions?

A. That is an extension.

Q. And it has been put in there since you came here? A. Yes.

Q. Whose property does it cross?

A. It crosses this property that, I believe, belongs to Johnson and Cordwood Jim and goes over and joins our main Mexican water system above the penstock. [1102]

Q. And that has been abandoned, you say?

A. Yes.

Q. There is another creek you tap on the Mexican?

A. No; there is no other on the Mexican. There is a creek in between Bullion and Ready Bullion creek. I don't recall the name of it now.

Q. What other water rights over there have you that cross property that do not belong to your companies?

A. The Ready Bullion or the United Company

(Testimony of R. A. Kinzie.)

water right—that crosses the Yakima and some claims I don't know the owners of.

Q. I cross-examined you about that a while ago?

A. Yes, sir.

Q. Besides what I have cross-examined you about, do your ditches or your flume-lines cross anybody else's property over there other than you have already testified to?

A. There is no other ditches we have in active service at the present time on Bullion Creek. Crossing the property that belong to Capt. Johnson, Mr. O'Connor and, I think, the Sunset Alaska Company, there is a dam or ditch on their property that took the water from Bullion Creek and took it over to our Mineral Queen claim.

Q. Was that water dam there when you came here? A. It was.

Q. You don't know anything about any agreement that was had before you came here concerning that water right? A. I do not.

Q. Coming down to this Gold Creek water right—you stated, I believe, in your answer that when you went upon Gold Creek to take up this water or had the man go on, that the water of Gold Creek was unappropriated water, etc., except, I believe, you excepted what Ebner had been using heretofore, and you excepted a certain water right of that creek that belongs to the Electric Light Co.—I think that is all the [1103] water rights that you recognized on Gold Creek, is it not?

A. I don't think we recognized an Ebner right be-

(Testimony of R. A. Kinzie.)

low our intake; no.

Q. You know where the old Jualpa high line flume is up there? A. Yes.

Q. If that is an outstanding existing water right, that would be a prior water right to any water right that you are now claiming on Gold Creek? Answer that yes or no.

A. I can't answer it by yes or no.

Q. Now, the intake of the old Jualpa flume is above your intake, is it not?

A. Our present intake, yes—that is where their intake was.

Q. There is a dam there across the creek?

A. Part of a dam; yes.

Q. If the Jualpa Company ever owned any water there and have not abandoned it, their water right would be a prior one to your water right, would it not?

A. Subject to that supposition, it would be.

Q. Coming on down the creek and up here this side of the Gold Creek bridge is the intake of the Juneau Water Company which furnishes the town of Juneau with water? A. Yes, sir.

Q. I will ask you if it is not a fact that your engineers, Mr. Whalen and another engineer over there, I will ask you if they did not come over here with your knowledge and testify on behalf of Lewis' Company to aid and assist in establishing the fact that Lewis Water Company was entitled to the entire flow of Gold Creek over that bed just above Gold Creek bridge.

(Testimony of R. A. Kinzie.)

Objected to as incompetent, irrelevant and immaterial and not cross-examination. Objection overruled. Defendant excepts. [1104]

A. I knew nothing about what they were going to testify, and I don't remember that I knew which side they were going to testify for—they were offered some outside employment and they took it.

Q. You know they were over here testifying in that case?

A. I know they were over here to testify in some case.

Q. You know that Clark Hile was president of the Jualpa Company? A. Yes.

Q. Did you have any talk with Clark Hile, the president of the Jualpa Company, about your people coming over here and taking part in that water fight?

A. Not that I remember.

Q. You know the Boston group of claims right here near the mouth of Gold Creek that belongs to Mr. Ebner and some other people?

A. I know Wagner has a claim there called the Boston group.

Q. And you know Mr. Ebner is interested in that property too?

A. I think he is to some extent; yes.

Q. You know he has been sluicing out there and using water there more or less for years in opening up and developing that property, all of which is above your present intake on Gold Creek?

Objected to as incompetent, irrelevant and imma-

(Testimony of R. A. Kinzie.)

terial. Objection overruled. Defendant allowed an exception.

A. They have been using some water. I don't know where they get it. I thought that water was coming from the Electric Light Co.'s ditch. I am not sure of that. They might have a water right there for all I know; if it has, our right is subject to it.

Q. As I understand it from your pleadings and contention in [1105] this case, you propose to take the entire flow of Gold Creek out at your intake and convey it down to the beach here at Juneau for the use of generating power for a mill you *expect build* on the sea level?

A. I don't think anything of that sort was said. We set a definite quantity of water we would take from Gold Creek.

Q. Yes, but you are taking 20,000 miner's inches out of the creek—you are claiming to?

A. We claim that amount of water.

Q. And you state in your answer there is not any more than 20 or 25,000 miner's inches in that creek—you call it a very small creek?

A. Possibly at times there is not that much.

Q. Then, if you go ahead with this undertaking you have testified concerning and construct your mill at sea level you intend to take all the water out of Gold Creek, convey it down to the beach to use it in this mill and then turn it out into Gastineau Channel?

A. No, we do not.

Q. You say you do not. What do you mean by

(Testimony of R. A. Kinzie.)

that, that you were not going to turn it into Gastineau Channel or didn't mean to take all the water out of the creek?

A. We don't mean to take all the water out of the creek.

Q. Some seasons you take all and a great deal more, too?

A. We couldn't do it. There are water rights prior to ours, but that water would have to come down the creek.

Q. There is a great deal of mining property claimed by other individuals from your intake down Gold Creek to Gastineau Channel, are there not?

A. I couldn't say there is a great deal. There are some claims belonging to Caro. The Colorado property is not on the [1106] creek; the Jualpa Company property is on the creek.

Q. Coming on down the creek below the Jualpa Company property there are some mining claims patented by Dick Lewis?

A. Yes, I think there is one claim there.

Q. And coming on down here you find quite a group of claims patented by the Boston Company you have just spoken of?

A. There are some claims there belonging to the Boston group.

Q. And coming on down further you strike an unpatented claim claimed by old man Seator?

A. Not that I know of.

Q. Seator, the gardener—you know him?

A. Yes.

(Testimony of R. A. Kinzie.)

Q. Haven't you seen the claim he has there?

A. I have not.

Q. You come below his property and you strike the property of Shattuck, patented into a placer mining claim?

A. I don't know that property; that must be in town.

Q. Yes, right in town across the creek there?

A. I don't know it.

Q. There is quite a bit of the Ebner property that your company don't claim below your intake, then?

A. That seems to be a question. I don't know what belongs to the Ebner Company.

Q. You know the Cape Horn property that is below your intake?

A. I heard Mr. Ebner say that belonged to him.

Q. There are several claims there, whoever they belong to? A. Yes.

Q. You know that every foot of land from the mouth of Gold Creek to the Colorado claim is taken up as mining property? A. I think it is.

(By Mr. HELLENTHAL.)

Q. Is any of your property between the Colorado and the mouth [1107] of Gold Creek in operation? A. No, sir.

Q. Has any of it been in operation for a number of years?

A. The last operation I know of was some hydraulic work done in the Basin by the Jualpa Company.

Q. How long ago was that?

(Testimony of R. A. Kinzie.)

A. Six or eight years ago.

Q. What is the capacity of your intake on Gold Creek? How many miner's inches do you take out of the creek approximately?

A. The opening is 3x3 with a grade of 5/10 per cent.

Q. About how many miner's inches would that carry? A. I couldn't say.

Q. Can you tell approximately?

A. No, I cannot.

Q. About how many miner's inches does the creek carry when the water is high?

A. Why, the creek has a wide fluctuation—it goes from almost nothing in the winter-time up to, I should say, between 30 and 40,000 miner's inches of water—perhaps more.

Q. Your flume would carry—probably range from 2 to 3,000 miner's inches?

A. Yes; somewhere in that neighborhood.

Q. Probably 5,000?

A. Yes, I think it would—it could be figured very easily. I have forgotten exactly.

Q. Do you know about the construction of the water ditches by the Nevada Creek Company?

A. I have seen the ditches; yes.

Q. When were they constructed?

A. There was some work done there about six years ago. [1108]

Q. Do you know the claim testified to as the Corbus claim across which the ditch Mr. Hudson testified to was built? A. I do.

(Testimony of R. A. Kinzie.)

Q. Do you know when that ditch was built?

A. No; I can't say I know when the first ditch was built, but I know there was work done on the ditch about six or seven years ago.

Q. Did anybody ask you for any consent?

A. No, they did not.

Q. You had charge of and were looking after that property at that time? A. In a general way only.

Q. You testified about enlarging the main Treadwell ditch across the Bear's Nest. When did you do that?

A. There was some work on that last year and some more work was done this spring—in fact, it is work that has been going on for the last four years.

Q. Did you obtain the consent of anybody, of the owners of the Bear's Nest property, to enlarge that ditch? A. No; we did not.

Q. Did anybody oppose your right to do so?

A. They did not.

Q. Or question your right? A. No.

(By Judge WINN.)

Q. Do I understand you to say that you are not seeking to appropriate from Gold Creek any more than two or three thousand miner's inches of water?

A. No, sir, you did not.

Q. You mean your flume, the flume you have at present constructed would convey about two or three thousand miner's inches? [1109]

A. No, I do not.

Q. What will your flume already constructed carry?

(Testimony of R. A. Kinzie.)

A. I can't say offhand. I would have to figure it.

Q. Have you ever figured it? A. I have.

Q. How much—give the Court a general idea.

A. I disremember what it was. I don't wish to make an estimate—it is a 3x3 flume inside and a grade of 5/10 per cent.

Q. Did you say a few minutes ago to Mr. Hellen-thal that that flume would carry about two or three thousand inches, miner's inches, of water?

A. Mr. Hellenthal said that.

Q. Can you give the Court an approximation of what the flume would carry?

A. No, I don't care to do so.

Q. What kind of boards did you make it from?

A. There are four by four springs in the bottom, boards 4x4 and caps four by four. The bottom is a beveled bottom of inch boards. The sides are made of four-inch boards battoned on the bottom with a 1x12 and the rest all battoned.

Q. You consider that a first-class flume?

A. It is a very good flume.

Q. There is a whole lot of gravel and stuff comes down Gold Creek by reason of the operations up above? A. Yes.

Q. There is a placer mine up there that has been worked for several years—the old Nowell placer?

A. Yes.

Q. That is worked nearly every season?

A. Yes.

Q. And above that is the one-hundred stamp mill of the Perseverance [1110] Company with dams

(Testimony of R. A. Kinzie.)

into the creek? A. Yes, sir.

Q. Does your debris and stuff find its way down to Gold Creek from your mill?

A. Practically none of our tailings; no.

Q. But there is a great deal of stuff that comes down there that is calculated to wear flumes?

A. Yes.

Q. And also to wear rocks? A. It would; yes.

Witness excused. [1111]

[Testimony of Thomas McConney, for Defendant.]

THOMAS McCONNERY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you resided here?

A. Since 1885.

Q. Ever since you have been here what has been your business? A. Mining and prospecting.

Q. Do you know the customs of miners in this district governing the appropriation of water?

A. Yes, sir.

Q. I mean the mining district surrounding Juneau, the Harris mining district and other similar mining districts around Juneau and Southeastern Alaska. A. Yes, sir.

Q. How can water be appropriated under the custom of miners?

(This testimony is subject to the same general objection, which is overruled and exception allowed.)

Q. State how the right to the use of water can be

(Testimony of Thomas McConney.)

acquired under the miners' rules as you understand them in this district.

A. The water can be located if it is vacant and run by a ditch or flume on any claim a person wants to work on.

Q. How is the water right acquired, by taking the water, using it or by just getting the land on the bank of the creek—what does one do to get a water right?

A. He puts up a location notice and claims the amount of water he wants to use and ditch with which he will flume it out of his ground. [1112]

Q. And put it to use? A. And put it to use.

Q. What right under the customs of miners has one seeking to appropriate water to cross the mining claims of others with ditches, flumes and dams and other ditch, appurtenances and canals in order to effect his diversion and appropriation?

A. There has not been any argument about it that I have heard. I never heard any argument about taking water across another person's ground.

Q. Under the custom as you know it, has the appropriator of water a right to build ditches and flumes across another person's unpatented mining claims?

A. Yes, he has, the way I have always understood it, and that has always been the practice here.

Cross-examination.

(By Judge WINN.)

Q. Did you ever build any flumes across anybody's property? A. I have—I helped to build them.

(Testimony of Thomas McConney.)

Q. What flumes did you help to build?

A. I helped to build, not a flume, but a ditch, in the Silver Bow Basin—Pete Bulger and Jack Olds and George Hartrader owned the ditch—it was a ditch sometimes called the Hartrader ditch and sometimes the Bulger.

Q. You helped work on that ditch? A. Yes.

Q. You didn't have any interest in the ditch property itself? A. No.

Q. You don't know what arrangements, if any, they had with anybody whose property it crossed, do you? A. No, I don't know.

Q. That is about the only experience you have had in ditch [1113] building, is it, here?

A. Well, I had some experience in what is called Wyndam Bay now, in the early days—in 1877.

Witness excused.

[Testimony of George Miller, for Defendant.]

GEORGE MILLER, called and sworn as a witness in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you been here?

A. Twenty-four years.

Q. Have you been engaged in the mining business, more or less, ever since you have been here?

A. Yes.

Q. In quartz and placer mines both?

A. Yes, sir.

Q. Do you own some quartz mines in Silver Bow

(Testimony of George Miller.)

Basin—did you own some? A. Yes.

Q. And placer mines in Porcupine?

A. I did own some there. I have sold them now.

Q. And you operated them yourself? A. Yes.

Q. Do you know the customs of miners in the mining district surrounding Juneau, including the Harris and other districts located in the Juneau gold belt, governing the appropriation of water and the acquisition of water rights?

(This testimony is subject to the same general objection. Objection overruled and plaintiff allowed exception.)

A. Yes.

Q. How can a water right be acquired?

A. We use water for power and to drive wheels with, and we have [1114] to go up the creek and get a certain fall, and we surveyed out a ditch for a flume wherever the ground was and took out the water.

Q. What right, if any, under the miners' custom as you understand it, has an appropriator of water or one seeking to effect an appropriation of water to cross the mining claims owned by persons other than the appropriator?

A. Why, he just crosses their ground or crosses our ground so long as they didn't interfere with us and we didn't interfere with them.

Q. That is the right one party extended to another? A. Yes, sir.

Q. Have you ever built any ditches across the ground or mining claims of others than yourself?

(Testimony of George Miller.)

A. Yes, sir.

Q. Whose claims have you built across?

A. We built across the placer and bench claims, and on our own claim—we took the water out of the discovery.

Q. Did you take the water off the discovery claim itself? A. Yes, sir.

Q. Whose claim was it?

A. Maloney & Dalton.

Q. Did you ask anybody's permission to go and take it?

A. Not that I remember—we might have talked to them about it.

Q. Was a consent or right of way given you or anything of that kind to take the water?

A. No, I didn't hear anybody give it.

Q. Did you take water off your claim? A. Yes.

Q. Who were the parties? A. Frank Tascher.

Q. Did he ask you for any consent?

A. They were talking about it—they put in a wheel and measured out the ditch and flume. [1115]

Q. You were right there on the ground and saw them work? A. Yes.

Q. Was any special consent given for it?

A. No; no written consent or anything like that. It was just go ahead and take it out.

Q. When was this that these ditches were built?

A. It was in 99–1900 and 1901.

Cross-examination.

(By Judge WINN.)

Q. That was up on Porcupine Creek? A. Yes.

(Testimony of George Miller.)

Q. You people were friendly to each other and just had a kind of mutual understanding up there?

A. Yes, we were all friendly. We lived right there.

Q. And had a kind of mutual understanding that each one of you was to go ahead and use the water as long as you did not deprive the other fellow of his water?

A. We had to have water to drive an overshot wheel—we had to go up the creek so far and when we struck the height we took it out.

Q. There was some mutual understanding among the people in the Porcupine?

A. Yes; it was a friendly understanding.

Q. Did you testify about any ditches up Silver Bow Basin?

A. No; I had nothing to do with the property up there.

Q. Where was the other property you had anything to do with?

A. We fetched in a ditch back of Porcupine City—there was a little creek there; I forget the name of it now. We fetched it along the hillside and along the Tascher bench claim.

Q. That was according to the mutual understanding you had up there about the use of water?

A. Yes. [1116]

Q. That was up on the Porcupine? A. Yes.

Q. In the Porcupine mining district? A. Yes.

Q. That is the only experience you had?

A. Yes, sir; that is all.

Witness excused.

[Testimony of Perry Wells, for Defendant.]

PERRY WELLS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You reside in Juneau? A. Yes.

Q. How long have you lived here?

A. I have been in Southeastern Alaska since 1896—not in Juneau all the time.

Q. And you have been in this district and the Juneau mining district since '96? A. Yes, sir.

Q. What business have you been following in Juneau? A. Mining.

Q. Since you have been in the district?

A. Yes,—mining.

Q. Have you operated mines of your own?

A. Yes, sir.

Q. In the Juneau district?

A. No—in Southeastern Alaska.

Q. Do you know the customs of miners governing the appropriation and acquisition of water rights in this district?

(Same general objection. Objection overruled and exception allowed.)

A. I know by my personal experience and general observation; yes. [1117]

Q. Under the custom of miners how are the rights to the use of water acquired?

A. By posting a notice and taking out the water and appropriating it.

Q. What right, if any, under the miners' custom

(Testimony of Perry Wells.)

has the appropriator of water or one seeking to acquire a water right by appropriation to cross mining claims owned by others than the appropriator in the construction of ditches and canals and other appurtenances to his ditches?

A. In my experience with one ditch we put in in the Porcupine, we spoke to the boys about it and went through with it.

Q. No one interfered with your building the ditches? A. No, sir.

Q. Across the ground of different parties?

A. No, sir.

Q. Under the miners' customs, has the appropriator a right to cross those intervening claims if he has to do so in order to get the water on his claim?

A. Under my observation, he just goes across—there is no particular bar to his going across as long as he doesn't damage the other party.

Q. If he damages the other party, he has to pay the damage? A. Yes, sir.

Q. You built one ditch you say under the circumstances narrated? A. Yes, sir.

Q. And how many people's mining ground did that cross? A. There was about five or six, I think.

Q. Whose ground did it take the water off of?

A. It took it off Government land. At the intake, there was a water right there, but we filed an additional water right—it was a glacier stream—and in July and August there would be [1118] about four to six times the amount of water coming down there than they claimed.

(Testimony of Perry Wells.)

Q. And you never obtained any permit to cross those claims?

A. No, nothing more than speak to them, some of them.

Q. They were right on the ground and you spoke to them? A. Yes, sir.

Cross-examination.

(By Judge WINN.)

Q. That was the Porcupine ditch people up there?

A. Yes.

Q. There was a kind of mutual understanding that on the waters of McKinley Creek and Porcupine Creek you parties were going to use the water, all of you?

A. The ditch we put in went up on the right-hand side, went up the main Porcupine and was taken out of Corser Creek, it didn't go on the McKinley Creek side.

Q. Taken out of Government land?

A. Yes, sir.

Q. There was a kind of mutual understanding in working those placer claims up there that you people were not going to raise any row about going across other people's property, but you went and got their consent to it before going across?

A. Yes, we spoke to them about it.

Q. That is some of the workings George Miller testified to?

A. No—it is on the same creek, but our ditch was not the same ditch.

Q. You own some quartz claims?

(Testimony of Perry Wells.)

A. Yes, sir.

Q. If you had a creek on there and were using some water or contemplating to use it, would you permit anyone to go on your premises and take it off of there? A. Not if I wanted to use it.

(By Mr. HELLENTHAL.)

Q. If you were not using it and didn't claim any right to it [1119] under your location for your own use, you would permit anybody to go on there and take the water out?

A. I suppose I wouldn't have anything to say about it.

Witness excused.

[Testimony of John Lockhart, for Defendant.]

JOHN LOCKHART, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. You reside on Douglas Island? A. Yes.

Q. How long have you resided in Alaska?

A. Eight years.

Q. What business do you follow?

A. Mining, most of the time.

Q. What was your business before you came to Alaska? A. Mining.

Q. You have been working mines for other people, as boss and different positions, in charge of properties? A. Yes.

Q. Do you know the customs of miners in the Harris mining district and surrounding districts, surrounding the town of Juneau, in the Juneau district, recording district, in the Southeastern district of

(Testimony of John Lockhart.)

Alaska generally with reference to the appropriation of water?

(Same general objection. Objection overruled and exception allowed.)

A. I ain't so very well acquainted with the miners' rules here.

Q. Do you know in a general way what the custom has been about appropriating water since you have been here? A. Yes.

Q. How is it done? How is a water right acquired in this country? [1120]

A. You have to locate it, put up your notice, build your flume for ditches, and if you want to run it across anybody's land, if you damage them you have to pay it, and if they are working below in the creek if your ditch goes over them and they dig it out, you have to put in a flume so it don't bother them—you have to fix it so you ain't interfering.

Q. If you build a ditch across and do any substantial damage, you are liable in damages, is that your answer? A. Yes.

Q. Subject to that restriction, have you a right to cross unpatented mining claims of others with the ditch? A. Yes, sir.

Q. Does it make any difference whether you take the water off of a mining claim or whether you cross to get to a mining claim or get above a mining claim—does that make any difference?

A. I don't know.

Cross-examination.

(By Judge WINN.)

Q. You don't pretend to be a water expert?

(Testimony of John Lockhart.)

A. No, I am not a water expert.

Q. You haven't had much experience in taking up water and devoting it to use in Alaska?

A. Not here; I have not.

Q. You used to work up here with the Jualpa Company? A. Yes, sir.

Q. Do you know how the Jualpa Company got its water right up there from Ebner?

A. I think it paid for it.

Q. Are there any other instances you know of of the application of water here—that you have any personal knowledge of, any other water rights except the Jualpa? [1121]

A. No, not here in this country.

(By Mr. HELLENTHAL.)

Q. While you were in charge of the work for the Jualpa Company did you build any ditches?

A. No, we didn't build any ditches; we built a flume.

Q. Did you take any water off of the property of the Alaska-Juneau Company? I call your attention to the Colorado claim—did you take any water off of the Colorado claim?

A. All the water we got from up there, we had to build a dam across the creek, build a side flume to turn the water around, so we built the dam in there—I guess that was on what we called the McCulley claim then—and then we came down along the Treadwell people's claim on the line of the flume; they had a small flume there—that brought the water around until we got the dam built, and then we tore

(Testimony of John Lockhart.)

that flume up and ran the water over to the dam.

Q. When you say the Treadwell people you mean the Alaska-Juneau Company? A. Yes, sir.

Q. The property referred to as the Wyoming, or the Idaho placer? A. Yes.

Q. Did you ask the consent of the Treadwell people to do that?

A. I don't know how that was. Mr. Hampton was superintendent and I was working under him.

(By Judge WINN.)

Q. What water was that—the Jualpa high line flume doesn't touch the Treadwell Company's property?

A. We had to put a rock dam up above the dam we put in there—we put a rock dam way up a little below Snowslide Gulch and then we built a flume and ran it around on the grade of the big flume to get the water out of the creek. [1122]

Q. So you could build a big dam? A. Yes.

Q. That was temporary works you put in there?

A. Yes; we had part of it finished and then to get the other part in, all we had to build, we built that flume to turn the water.

Q. After you got through with that temporary work it was all taken out? A. Yes, sir.

Q. And whatever arrangement was made about that was made by Mr. Hampton, who was building the big flume for the Jualpa Company?

A. Yes, sir.

Witness excused.

[Testimony of ——— Howell, for Defendant.]

——— HOWELL, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. HELLENTHAL.)

Q. Where do you live? A. Juneau.

Q. How long have you been in Alaska?

A. Ten years.

Q. What has been your business since you have been in Alaska?

A. Mining, most all of the time.

Q. In Southeastern Alaska and around Juneau?

A. Six or seven years around Juneau. I was at Nome two summers.

Q. You followed mining for some years before you came to Alaska? A. Yes, sir.

Q. Do you know the custom of miners governing the acquisition of water rights in the Harris mining district and surrounding districts located near the town of Juneau and in Southeastern Alaska?

A. Well, I understand that when there is water running to waste [1123] a man can take it up and cross any claim as long as he don't damage the party he is running over—if he does, he pays the damages.

Q. The right to the use of water is acquired by taking up the water—conveying it and using it?

(Testimony subject to same general objection. Objection overruled and exception allowed.)

A. Yes, sir.

Q. If in appropriating the water it is necessary to cross the mining claims belonging to others, quartz or

(Testimony of ——— Howell.)

placer, the appropriator has the right to cross with his ditch, flumes, canals and other appurtenances?

A. I understand so, where I have mined.

Q. That has always been the custom? A. Yes.

Q. Where have you mined?

A. Idaho, Montana, Colorado, Alaska.

Q. It has been the custom everywhere you have ever been? A. Yes, sir.

(By Judge WINN.)

Q. All you know about this custom prevailing in Alaska is what you heard other people say—you have not run across anybody else's property in Alaska?

A. Yes, at Nome I did. I have not mined on my own account here.

Q. You had control of the Salmon Creek property out here?

A. I have—that is not a mining property, though; there is some mining claims there.

Q. Have you kept up your assessment work on mining claims up there yourself? A. Yes, sir.

Q. The other property up there as far as the mining property is concerned has been abandoned?
[1124]

A. No, I have represented there every year.

Q. You have? A. Yes, sir.

Q. And also represented the water?

A. Yes, sir.

Q. You didn't cross anybody else's property with your water?

A. No, we owned all the property there.

Q. Where have you operated in Southeastern Alaska?

(Testimony of ——— Howell.)

A. I said I had never operated any mines here in this part—at Nome I did.

Q. All you know about this custom is what you have heard these people say and some people testifying in the courtroom here, here in this vicinity?

A. Yes; but at Nome I crossed other people's property.

Q. That is all in Southeastern Alaska?

A. Yes.

(By Mr. HELLENTHAL.)

Q. That Salmon Creek property—what kind of property is that?

A. It is a water-power property—a water right property.

Q. You have had some experience with the Salmon Creek water? A. Yes, sir.

Q. (By Judge WINN.) Your water right up there and mining property is all together?

A. Yes, sir, it is all adjoining.

Witness excused.

Mr. SHACKLEFORD.—We desire to offer in evidence certified copy of proof of labor on the Oregon lode for the year ending December 31, 1901. (It is marked Exhibit 51.)

Judge WINN.—That, of course, is the Corbus location.

Mr. SHACKLEFORD.—Yes, sir.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial, and in view of the testimony already offered there has not been any work done on it since 1905. [1125]

Objection overruled. Plaintiff allowed an exception.

It is admitted as Defendant's Exhibit 51, certified copy attached hereto and made a part hereof.

Mr. SHACKLEFORD.—Also proof of labor in 1900 on the same claim.

Same objection. Overruled. Plaintiff allowed an exception.

It is marked Defendant's Exhibit 52, attached hereto.

Mr. SHACKLEFORD.—Also for 1902.

Same objection. Overruled. Exception attached hereto.

It is marked Defendant's Exhibit 53.

Mr. SHACKLEFORD.—Also for 1903 and 1904.

Same objection. Objection overruled. Plaintiff allowed an exception.

It is marked Defendant's Exhibit 54, attached hereto.

Mr. SHACKLEFORD.—I want to recall Mr. Stewart. [1126]

**[Testimony of B. D. Stewart, for Defendant
(Recalled).]**

B. D. STEWART, a witness called and sworn in behalf of the defendant (recalled), testified as follows:

(By Mr. SHACKLEFORD.)

Q. I will ask you if since yesterday you have made any excavation on the boulder mentioned in the testimony here at the discovery point on the Parish #2 lode claim, since you were last on the stand, with

(Testimony of B. D. Stewart.)

reference to whether it is slide rock or rock in place.

Judge WINN.—We object to that. The witness had been withdrawn from the stand. We do not think he should be permitted to go back to the property to gather up further information as to the discovery and then have them reopen the case on that one proposition. If this is admitted, we would not want to be forced to go ahead to-night—we would not want to be forced to close to-night.

Objection overruled. Plaintiff allowed an exception.

A. I have.

Q. Just state to the Court what was done.

(Same objection to all this testimony. Overruled and exception allowed.)

A. I went up yesterday afternoon on my own initiative and re-examined the ground and did a little picking around there myself and some pick and shovel work underneath the boulder, and went up this morning and dug an open cut, what I considered about the level of the lowest part of the boulder, underneath the boulder for a distance of about seven feet horizontally from what would be the southerly side of the boulder, the one toward the open cut; that brought me almost under the centre of the boulder. Then I sunk or had sunk a little shaft about three feet wide and 4 feet long, [1127] perhaps, and we sank down here until we got to a depth of from five to six feet beneath the lowest part of the boulder as it showed underneath. That little shaft was entirely in drift matter, drift material; the bottom of the

(Testimony of B. D. Stewart.)

boulder was plainly visible, however, and very distinct and plain—everything above it was a solid mass of rock and everything beneath it was loose gravel and boulders of very heavy igneous character—they were granite boulders, pieces of granite and other rock that was entirely different from the boulder itself. As further evidence of being a boulder, when we got to the open cut underneath the entire mass gave evidence of breaking away from its position, and we had to timber it up in order to keep it from falling. I obtained samples from the bottom of the shaft.

Q. Have you those samples?

A. I have. I would further state in regard to that shaft—the bottom of the shaft, I should judge, was about 8 or 10 feet in elevation below the bottom of the open cut as it was before the small pit was dug in the bottom.

Q. These are the samples, are they?

A. They are.

Q. I hand you this sample and ask you to state what that is.

A. That is a piece of granite containing considerable mica which I broke off of a large rounded boulder in the bottom of the shaft, at a point about 5 or 6 feet below the bottom of the large boulder and underneath the centre of the boulder.

The sample is admitted as Defendant's Exhibit 55.

Q. I now hand you another piece of rock and ask if you found that underneath the boulder—tell the Court where you found it and what it is. [1128]

(Testimony of B. D. Stewart.)

A. That is a piece of greenstone which came from the bottom of the same small shaft underneath the pit.

Q. As you found it—it was not attached?

A. No; it is a pebble I dug out of the sand—drift material.

It is admitted as Defendant's Exhibit 56.

Q. Here is another. Describe that piece, where you found it and what it is.

A. That is another piece of greenstone with some seams of white quartz in it—it came from the same place the other two specimens did.

It is admitted as Defendant's Exhibit 57.

Q. I hand you another rock and ask you to describe that in the same manner.

A. That is a piece of green dogrock, in which the crystals of feldspar can be noticed—it is drift material; it is rounded off; it is not angular as it would be if freshly broken off from a ledge or piece of rock in place or the boulder, either.

Q. Where did you get it?

A. I got it from the bottom of the small shaft.

It is admitted as Defendant's Exhibit 58.

Q. I forgot to ask you the other day, did you make any investigation of the other point mentioned by Mr. Ebner in his testimony as the place where he subsequently found value? A. I did.

Q. Did you make investigation of the ground described by him in the vicinity of the side line of the Lotta claim and not far distant from the cabin there?

A. In a general way I did.

(Testimony of B. D. Stewart.)

Q. Is there any rock in place over in that vicinity?

A. I think not; no, sir. [1129]

Q. Describe it.

A. I will state that from the Borean pit on up for several hundred feet above is slide of the same character—you don't get to bedrock until you get pretty well up the hillside, above the Lotta claim, I should say, on that particular line, a line drawn east of the Borean pit.

Q. Did you hear him describe an open cut on Gold Creek about 20 feet below the lower tunnel in his testimony the other night? A. Yes, sir; I did.

Q. Did you make an effort to find that?

A. I did.

(Same objection as to the other part of the testimony. Overruled and exception allowed.)

Q. Did you find a cut?

A. I couldn't find any cut in that vicinity at all.

Q. Did you find any cut at all other than what might be called an open cut in drift material in the Borean pit, where you found it?

A. We didn't find any. I measured 20 feet from the mouth of the lower Parish #2 tunnel; that brought me to a point, raised me out of the water at an angle of 60 to 80°. Slide rock all the way up to the flume. The base of this cliff is washed smooth, rounded off by the water, and if any cut had ever been there, it would be exposed at this time.

Q. You heard the testimony of witnesses here with reference to the assessment work done on these claims for a number of years, with reference to re-

(Testimony of B. D. Stewart.)

pairing a dam on the ditch that leads into the Borean pit—do you know where that ditch is, that dam? A. I know where the ditch is. [1130]

Q. Do you know where the dam is?

A. No, I couldn't find the dam. I looked for the dam and it was probably within 20 or 30 feet of snow.

Q. Did you notice it last fall? A. No, I did not.

Q. Was there reconnaissance up there sufficient to state whether that dam following up that ditch line would be on the Parish #1 or Parish #2 claims?

A. I think so.

Q. State whether it is on those claims or not.

A. I think not, from the work I did there. The opinion I have is this: I had my instrument set up at a point where the blue line indicating the stream crosses the southeasterly end line of the Parish #2, and I sighted up along the ditch line that comes down there over the brow of the hill and followed back up on that line until I came to the brush, which line indicates the projection in the southeasterly direction of the Lotta side line on the ground and apparently the ditch seemed to continue in that direction.

Q. Over into the Royal ground?

A. Over into the Royal ground.

Q. You are pointing to exhibit 7?

A. Yes, sir, exhibit Number 7.

Q. So with the ditch within the two Parish side lines, the dam is not to be found?

A. I couldn't find it.

Q. And the ditch continues on beyond that side line?

(Testimony of B. D. Stewart.)

A. Yes; I wouldn't call it a ditch. It is where the water is flowing—has flowed down through there, cut through the wash.

Q. That is the only ditch leading into the Borean pit? [1131]

A. That is the only evidence of anything of the kind I could find.

Cross-examination.

(By Judge WINN.)

Q. How far did you go over that ditch?

A. I followed over to the snow line, as near as I could go.

Q. Did you follow it over until you got outside the lines of the Parish Number 1 and 2?

A. Yes, over that brushed-out line, that is brushed out for the projection of the Lotta side line.

Q. You say that you don't know whether that was a ditch or a place that had been washed out by the water coming down the hill?

A. It is very apparent it had been used in connection with the washing out of the pit—it is the only place where a watercourse comes into the pit, a watercourse of that size.

Q. You don't want the Court to understand that there never has been a dam up there in the creek, up there in Snowslide Gulch?

A. Not at all. I should judge that the only ditch I found there came from off the Royal claim.

Q. And this ditch you found don't lead into Snowslide Gulch?

A. It was leading from that direction as far as I

(Testimony of B. D. Stewart.)

could follow it over the snow. You can see from the map the general course of Snowslide Gulch. If that line was continued on there a few hundred feet it would strike on the Royal claim and intersect Snowslide Gulch about there—on the Royal claim.

Q. You would have to go up five or six hundred feet nearly to the other side of the Royal claim?
[1132]

A. I don't remember the length of the Royal claim. I think it is 1,500 feet and it would be the distance, the length of the Lotta, out here on the map.

Q. Now, the only excavation you have done up there in the last couple of days was in the Borean pit? A. It was.

Q. How many men did you have helping you there?

A. I was alone part of the time yesterday afternoon and part of the time I had one man helping me a little bit, and this morning I had two men—there were three others up there.

Q. And on the projected part of this rock that you call a boulder you excavated back underneath it about how many feet?

A. Well, if a plumb line were dropped from the face of the boulder as it faces the Borean pit and the measurement were taken from that plumb line back under the boulder as far as I got, it would be about seven feet, I think.

Q. You really excavated about how much—there was some washed out before you commenced excavating?

(Testimony of B. D. Stewart.)

A. No, it was perfectly in place before I started the excavation, that is, the drift material was in place—that is underneath the boulder it never had been disturbed.

Q. So you didn't extend any excavation that had been made there but commenced a new excavation entirely?

A. There was no excavation commenced at that point underneath the centre of the boulder—the wash was banked up a little bit alongside the boulder.

Q. You didn't get to the end of the boulder?

A. I got about under the centre of it.

Q. That is under the centre of it as it appears uncovered? [1133]

A. Yes, as she is uncovered. I made measurements below and estimated it was about under the centre.

Q. As it appears uncovered? A. Yes.

Q. Did you put any shot in there to fire off any of it—use any powder close to the bottom of the shaft?

A. I ran across a boulder, a rounded boulder, that was imbedded in the wash, and we couldn't pull that out, and I had the men drill a hole in it and shot it to pieces and found drift material underneath it—took the boulder out, dug it out.

Q. Where did you sink this shaft with respect to the excavation you dug—how far underneath the boulder, that is, from a plumb line where you started under it—did you sink the shaft?

A. The side of the shaft which is farthest in under the boulder would be about 6 or 7 feet.

(Testimony of B. D. Stewart.)

Q. How far did you sink that?

A. To a depth of about five feet below the bottom of the boulder. I could stand in the bottom of the shaft and stand right underneath the boulder and that shaft gave a cross-section of drift material, a cross-section about six feet deep.

Q. When you refer to the boulder, you refer to the big boulder, not to the one you blasted out?

A. No; to the big boulder.

Q. You say that the material in this big boulder was of such a nature you had to prop it up to keep it from falling down on you?

A. I thought it was wise to—it was rather dangerous work to work under it.

Q. Did you notice any quartz seams in that boulder? [1134] A. I did, yes, sir.

Q. Were you here when Mr. Jones testified yesterday? A. Yes; I was.

Q. Did you ever go up back on the hill there to see whether there were any of those quartz seams in any of the formation on further up the hill from this boulder—the way that Mr. Jones said he went up there yesterday?

A. I didn't get his directions very clear. I think he meant directly east from the Borean pit. I have been up there, yes. I have been up to the base of the cliff he spoke of.

Q. In that formation going up there you have seen quartz seams in that, too? A. Yes, I have.

Q. That isn't anything unusual to see in any of that formation up there—that is one of the particu-

(Testimony of B. D. Stewart.)

lar things described both by Wright and Spencer in the formation of that country there?

A. Yes, in the ore-bearing formation—within the ore zone; yes.

Q. Have you read Spencer's report as made in 1906 regarding the Juneau gold belt?

A. I have read portions of it.

Q. Have you read that portion of it which refers to the Ebner property and the Juneau gold belt in particular?

A. I have read extracts of it; yes.

Q. Did you ever see any of the report that was made by Mr. F. S. Emmons and C. W. Hayes in 1903? A. I never have read that; no, sir.

Q. Your theory, then, of that piece of rock is that it was slide that came about from what distance from where it is now in the Borean pit?

A. I should judge somewhere in the neighborhood of a thousand. [1135]

Q. A thousand feet?

A. On the slope that would be.

Q. Did you ever observe as to whether or not the seams run at about the same dip, the seams in that, as they do in the formation back of the hill that Mr. Jones testified concerning yesterday?

A. The quartz seams run in every direction.

Q. Up there?

A. Yes, sir; all through that and in the boulder, too, but there are prominent quartz seams which run in an entirely different direction from the seam he described yesterday.

(Testimony of B. D. Stewart.)

Q. You found others, did you? A. Yes.

Q. You didn't bring any samples of that rock down, where it had quartz seams in it, did you?

A. I have samples at the office—it is an entirely different quartz from the quartz you find in the schist.

Q. Then, the seams in that rock, of quartz, which you found were different from what Mr. Jones testified concerning?

A. Not different, but I am referring to other seams than the particular ones he referred to.

Q. And that boulder is of such a soft formation that you thought you would have to prop it up?

A. Not soft at all; no, sir.

Q. What were you afraid of?

A. Because it was lying on washed material, on gravel and dirt, and if you take the gravel and dirt out from underneath it, the whole thing will come down.

Q. You heard Mr. Kinzie's testimony?

A. Yes, sir.

Q. Is that the boulder he referred to when he thought it was as big as this courtroom?

A. I didn't hear him say that.

Q. Mr. Shackelford asked you something about going down to the [1136] cabin, about the cabin, and still on down the creek at some other points that Mr. Ebner testified he made discoveries on this claim—what did you find near the cabin there, did you do any unearthing?

A. I did not, no—I didn't say I had been there

(Testimony of B. D. Stewart.)

to-day or within the last few days, but I have been over that country and know the general character of it along there—in the vicinity of the cabin and on beyond there is covered with drift.

Q. To what depth?

A. I don't know. I have been up the end line of the Lotta extended up to the base of the cliff and know the character of the ground up to the base of the cliff.

Q. You didn't make any excavations there to find out the depth of it? A. I did not; no, sir.

Q. You don't wish to be understood that Mr. Ebner did not go down there to find out the character of the formation? A. No, sir.

Q. Then, you came down to another point where Mr. Ebner said he made the discovery on the creek there?

A. I knocked some pieces of rock off with my pick.

Q. You didn't do any excavating there?

A. You couldn't do any excavating; it is a solid bedrock.

Q. Where is the point you testified about that you didn't see any signs of an open cut?

A. It was twenty feet down the creek from the mouth of the lower Parish #2 tunnel and up from the creek a little distance.

Q. You simply said you didn't see any signs of any excavation having been done there?

A. I certainly did not; no. [1137]

Q. You didn't do any?

A. I did not, except to knock off some pieces of the

(Testimony of B. D. Stewart.)

rock with my pick.

Q. You know all along there where the flume-line has been put in by the defendant company and between that and the creek there is exposed bedrock there and rock in place?

A. There is bedrock and rock in place all along there; yes, sir.

Q. Almost the entire width of the Parish #2 claim and part of it is exposed in the cross-section of the creek there for several hundred feet along the creek?

A. There is bedrock exposed—I mean in the canyon *where*—

Q. It is between your flume-line and the creek bed? A. Yes, sir.

(By Mr. SHACKLEFORD.)

Q. I will hand you a map of the United States Geological Survey Bulletin No. 287, Plat #9, and ask you to examine the same and see if you can locate the Ebner mill and compressor plant on that map.

A. I see what I take to be those two points; yes.

Q. Examine the same with reference to the ground in controversy between the Parish #2 and the Oregon lode claim and with reference to the line marked footwall.

A. I see a line here, a dotted line. It is not marked footwall, but I take it it means that—it is marked black slate on the upper side, on the northeasterly side and greenstone on the southwesterly side.

Q. I will call your attention to page 61 of the same bulletin and ask you to read the description of the

(Testimony of B. D. Stewart.)

footwall in there, and after examining that, locate the footwall on the plat which you have (exhibit 49). [1138]

A. (Reading:) The paragraph is headed—Greenstones of the footwall. The greenstones which form the mountain between Silver Bow basin and Gastineau Channel are in large part metamorphosed lavas, but it is often impossible to separate the volcanic flows from intrusive material, which is likewise completely altered from its original condition. The complex as a whole is imbedded upon a large scale, and the secondary cleavage which has been developed in it is parallel with the original structure, striking northwest and southeast and dipping northeast. In many places the rock is impregnated with pyrite, either irregularly or along contacts between two layers, where movement has permitted ready access to circulating waters. Veins are also found, but for the most part these give little indication of value, though there has been considerable prospecting at several points situated at no great distance from Gastineau Channel.

Judge WINN.—I move to strike that out. That is found in this Bulletin at page 61 and doesn't locate the particular place, while at page 66 it takes up the Ebner mine and goes on and describes that. It is misleading and incompetent, irrelevant and immaterial.

The COURT.—The motion will be denied at this time with leave to renew it after the witness has finished his testimony.

(Testimony of B. D. Stewart.)

Q. I will hand the witness Bulletin 287, Plat 15, U. S. Geological Survey, and ask him to examine the same and state whether he can locate the position of the property in controversy with reference to the lines indicated as the footwall boundary of the Juneau gold belt.

A. I can from this; yes, sir.

Q. Just state to the Court from an examination of that map [1139] whether the Parish #2 lode claim is in the belt or outside the belt as defined by the footwall boundary?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The ground which would be included in the Parish #2 would lie outside of and to the south and southwest of the belt as it is marked on this map.

The plat referred to, being plat 15 of Bulletin 287, is marked Defendant's Exhibit 59 and offered in evidence.

Judge WINN.—I object to it as incompetent, irrelevant and immaterial.

By the COURT.—I consider it hearsay, but if the case should be appealed to a higher court, that Court might look at it differently and it will be in the record. Objection overruled and plaintiff allowed an exception.

(By Judge WINN.)

Q. I will ask you to take this Bulletin, issued in 1906, at page 66, and ask you if on that page and the

(Testimony of B. D. Stewart.)

following three or four pages, if a description of the Ebner mine is not entered into in detail so far as the geological survey was made?

A. It seems to be; yes, sir.

Q. I wish to identify at this time pages 66, with the plate upon it, pages 67, 68, and then the plate following 68 and down to the words "Alaska-Juneau Mine" on page 69, and I will ask the witness if that is not all devoted to a write-up by Mr. Spencer of the formation, geology, etc., of the Ebner mine?

A. Most of it seems to be an interpretation of the folding of the strata there in that vicinity in the pages you mention as related to Mt. Juneau and the Humboldt property. [1140]

Q. Is the Humboldt property included in that?

A. It is mentioned here.

Q. That is the adjoining property to the Ebner property? A. Yes, sir, northeast.

Q. You have been in geological surveys yourself?

A. Yes, sir.

Q. They are to some extent based upon a careful investigation so far as they go?

A. Yes, they are.

Q. But they don't go into it minutely to find out in every mine the formation, etc., do they?

A. They are pretty careful about that.

Q. They make the examination chiefly from the surface indications and whatever open work they find upon the property?

A. Whatever work is accessible they usually go into if they are allowed to.

(Testimony of B. D. Stewart.)

Q. They don't go into any underground workings themselves—they perform no labor?

A. Yes; to make any underground workings they have their instruments, to obtain the geology.

Q. They don't run any tunnels on the property?

A. Not on their own initiative; no, sir.

Q. They take the work as they find it at the time?

A. Yes.

The pages of the Bulletin 287 mentioned by Judge Winn are admitted as Plaintiff's Exhibit "MM."

The WITNESS.—Of course, in these geological examinations it is not possible, no matter how well trained or how much a man knows about mining, etc., it is all the same as anything else, they can't tell what is under the ground or what you [1141] may strike by underground work, except so far as the indications may show on the surface. Of course, the deductions are based upon the surface work taken in connection with the observations that they make underground, and the whole thing is correlated and they draw their conclusions from the way those things seem to correlate.

Q. But if the underground work is not there, they don't do the underground work?

A. Then they trace out the faults, etc., and reference is made where the country is cross-sectioned, etc., by means of tunnels or anything of that kind.

(By Mr. SHACKLEFORD.)

Q. Have you made any investigation of that surface ground with reference to the limits of that belt?

A. More or less in a casual way. I have not made

(Testimony of Ed. Webster.)

any particular examination—I have noticed it in a general way.

Witness excused. [1142]

**[Testimony of Ed Webster, for Defendant
(Recalled).]**

ED WEBSTER, recalled.

(By Mr. SHACKLEFORD.)

Q. I will ask you when you first became acquainted with the Gold Creek canyon and the property in the vicinity of the Ebner property? A. In 1882.

Q. You have been up and down the creek a good deal since then? A. Not any since '98.

Q. Before that time a great deal? A. Yes, sir.

Q. I will call your attention to the picture marked "U" for identification and to a cavity underneath a place marked "C" in red ink at the side of Gold Creek canyon and ask you if you remember that cavity. A. I do.

Q. Is that a prominent object of sight as you go and come on that creek?

A. It was when I was there.

Q. That cavity can be seen at any ordinary stages?

A. Yes; you could see it at any time.

Q. From the time you first went there until the time you quit going up there?

A. Yes, sir; I have been to it different times and tried to get to the bottom of it.

Q. Does it run in?

A. It drops—there is a cavity down in it.

Q. So it doesn't show the entire cavity from the photograph? A. No.

(Testimony of Ed Webster.)

Q. Now, how does the creek appear upon that picture to you, as you recollect it, with reference to its ordinary course?

A. Well, it is about the course of the creek.

(By Judge WINN.)

Q. I will hand you this Bulletin No. 287 of the Juneau gold [1143] belt, Alaska, by Arthur C. Spencer, and will call your attention to a photograph in there, between pages 66 and 67, which says, "Cascade above Last Chance Basin, Gold Creek." I will ask you if that represents a photograph of the falls and the Ebner mill, etc.?

A. Well, I think it does.

Q. That was taken what year—does it say underneath there? A. 1900.

The photograph is admitted in evidence as Plaintiff's Exhibit "NN."

The WITNESS.—That was taken when the creek was high.

Q. Did you say about how frequently you could see that cavity there?

A. I was only to it three times and that was in the fall of the year.

Q. Was the water high or low then?

A. The water was pretty low then, when I was there.

Q. Can you observe it in this photograph in Bulletin 287—does it appear there, did you notice?

A. I can't tell it there; no.

Q. That is on account of what, do you think?

A. The water is so high there.

(Testimony of Ed Webster.)

Q. It was so high? A. Yes.

Q. I will ask you if you ever find such cavities where rocks would get in and wash out into the soft rock—just such cavities as that?

A. I would call it a pothole.

Q. What in your judgment caused it?

A. It is the fall of the water, rocks lying in a small hole and large rocks coming in it—the rocks remaining there. [1144]

(By Mr. SHACKLEFORD.)

Q. I understand you did not distinguish the hole on this picture in the plat of the geological survey. Take that picture and this exhibit “U” and see if you can establish that hole.

A. Yes, it is just at the foot, there—this is where that hole would be. The two pictures are not taken from the same place.

Q. You mean in exhibit “U” you are looking straight up the creek?

A. It is taken from that side of the creek and this is taken from a point this way.

Q. I will ask you to examine it a little more closely. Locate the slide with reference to a point marked “B” on the plat “NN”—see if you can establish that cavity on that plat NN too.

A. It is there; it would be the same place. In this picture the creek is high and in this one it is low.

Q. I will call your attention to a point off the right-hand side of the creek there to the right of defendant company and ask you if that is not the same cavity as appears in “NN” as the cavity that

(Testimony of Ed. Webster.)

appears at the point marked "C"?

A. It is the same.

Q. In both pictures? A. Yes, sir.

Q. And is visible now? A. Yes, sir.

Witness excused. [1145]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE, recalled.

(By Mr. SHACKLEFORD.)

Q. I will ask you if after the first notice of water location, water appropriation, referred to in the defendant's answer in this case, a further notice was posted at the present intake of the dam, amended notice?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, there was.

Q. Do you remember when that was posted?

A. Posted on the same date as given in the notice.

Mr. SHACKLEFORD.—We offer the amended notice of location.

Same objection. Objection overruled. Plaintiff excepts.

It is admitted as Defendant's Exhibit 60. Copy attached hereto and made a part hereof.

Q. I will ask you if you have made an examination of the formation in the vicinity of the property and Snowslide Gulch for the purpose of locating what is

(Testimony of R. A. Kinzie.)

known as the Silver Bow fault and for the purpose of locating the fault of the boundary of the Juneau gold belt as it passes across the creek?

A. I have traced out parts of it but not the entire fault.

Q. Have you made any examination of Gold Creek canyon with reference to the place where the footwall, the boundary of what is known as the belt, passes through Gold Creek?

A. I have determined the footwall portion of the ore body, the ore belt; yes.

Q. Determined the portion where the ore belt runs into what is known as the greenstone footwall on the creek there?

A. That is the contact; yes, sir.

Q. I will hand you plate No. 15 of Bulletin 287, being Defendant's Exhibit 59, Bulletin 287 of the U. S. Geological Survey and [1146] ask you to examine the same and particularly the intersection of what is marked thereon as the footwall boundary of the lode system below the Ebner mill, and state to the Court if you know whether that is in proper position with reference to the creek and the other marks delineated on that exhibit?

Same objection. Objection overruled. Plaintiff excepts.

A. Yes; I should say it is.

Q. I will call your attention to a building to the southwesterly of that point marked "New Mill" and ask you what that is.

A. That is in the position of the new Ebner mill

(Testimony of R. A. Kinzie.)

and compressor plant, that is, the mill has never been completed but the compressor has—the buildings, but no machinery been put in.

Q. There is a mill building at that point?

A. Yes, sir.

Q. I will ask you also, if that map indicates in a general way the direction and position of what is known as the Silver Bow fault you described in your direct examination before and upon which Mr. Bradley has testified as to the purpose of running that tunnel?

Objected to as hearsay. Objection overruled. Plaintiff allowed an exception.

A. The fault is approximately in the same position as shown by the fault line on this map, approximately the same position as the line marked Fault on this map. It is a fault we know as the Silver Bow fault.

Q. That is the fault by which you intend to drive into the Alaska-Juneau main body? A. Yes, sir.
(By Judge WINN.)

Q. Where do you say that line is, in your judgment, upon the [1147] ground?

A. With reference to these mining claims, with Snowslide Gulch, the direction of Snowslide Gulch is identical with the Silver Bow fault, very likely what caused Snowslide Gulch—the Silver Bow fault passes up from Snowslide Gulch and goes through a little knoll, through the end of the Silver Bow mill, passes right down and comes down from Snowslide Gulch.

(Testimony of R. A. Kinzie.)

Q. I will refer you to your Exhibit 7. You have Snowslide Gulch marked on there—is that where you think Spencer intended to locate that line?

A. Yes; the fault as shown on the surface would be at a point coming down about this way, about like that—dipping in this way.

Q. You indicated the general line of Snowslide Gulch?

A. Yes, east and west—dipping to the north.

Q. Where in your judgment on the ground does that fault break off and where does it break off if the line you have indicated of this plat was about there, for the purpose, you say, it is, in reference to any of these mining claims on the ground?

A. It faults the entire ore body, what is known as the Ebner Mine—the ore body comes over and meets the fault and is thrown north into Silver Bow Basin—it throws in that direction.

Witness excused. [1148]

**[Testimony of Grover C. Winn, for Defendant
(Recalled).]**

GROVER C. WINN, recalled.

(By Mr. HELLENTHAL.)

Mr. HELLENTHAL.—We now offer in evidence a certified copy of the rules and regulations of the Harris Mining District relating to the acquisition of water rights, certified by the United States Commissioner.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial and not tending to prove any of the issues in the case.

(Testimony of Grover C. Winn.)

Objection overruled. Plaintiff allowed an exception.

It is admitted as Defendant's Exhibit 61.

Q. You are the United States Commissioner for the Juneau precinct? A. I am.

Q. And as such are also the recorder for the Juneau recording district? A. Yes, sir.

Q. And the custodian of the records of that precinct? A. Yes, sir.

Q. As such recorder and commissioner have you in your custody the records of the Harris mining district? A. I have.

Q. Back as early as '81? A. Yes.

Q. I hand you exhibit 61, which purports to be a certified copy of the rules and regulations of that district relating to the acquisition of water rights, and ask you to look at it. And I will ask you is that a copy of the records of the Harris Mining District that are in your custody as such commissioner? A. It is.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any issue in the case—there is no evidence to show they were ever followed—the last meeting seems to be in 1882. [1149]

Objection overruled. Plaintiff excepts.

Mr. HELLENTHAL.—We have here a pamphlet containing the same rules that have already been offered. The date contained on the last page of the pamphlet is 1886, and I offer the pamphlet for the purpose of showing that in the year 1886, these min-

(Testimony of Grover C. Winn.)

ing rules, the local mining customs offered in evidence, were still being published in book form under the authority of John G. Heid and George W. Garside and distributed as the rules and customs for this mining district.

Objected to. No foundation laid.

By the COURT.—Do you expect to offer proof that that was published by authority of anyone?

Mr. HELLENTHAL.—Merely that it was published by a practicing attorney.

Objection overruled. Plaintiff excepts.

The title page is admitted, with permission to substitute a copy.

Mr. HELLENTHAL.—The title page reads as follows: “Local Mining Laws of the Harris Mining District, Alaska. Published by John G. Heid and G. W. Garside, Juneau, Alaska.” On the last page of the book is contained the following: “In testimony whereof I have hereunto set my hand and official seal this the 9th day of May, 1886. John G. Heid”—printed, not in signature—“District and Mining Recorder.”

(By the COURT.)

Q. John G. Heid was a former recorder as shown by your records? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) This pamphlet, the title page of which has just been offered, contains among other things the same rules that appear on exhibit 61?

A. I will leave this so you can compare it.

Q. Did you know Judge Delaney in his lifetime?

(Testimony of Grover C. Winn.)

A. I did. [1150]

Q. What was his business here?

A. At one time District Judge and later a practicing attorney.

Q. When was he District Judge?

A. I think he retired in 1896—from '92 to '96.

Q. Prior to that time was he a practicing attorney?

A. I wouldn't be sure about that; I think he was—he was here in the district, anyway.

Q. Did you know Gamel? A. Not very well.

Q. There was such a firm of lawyers as Delaney & Gamel practicing in this town of Juneau?

A. Yes, sir.

Q. Do your records show when one W. R. Hoyt was district recorder? A. Yes, sir.

Q. What were the times between which Hoyt was recorder?

A. The first printed record I have in the office made by Hoyt as district recorder is filed for record August 11, 1890.

Q. How long did he remain as recorder according to your records?

A. The last one is made on January 16, 1894.

Q. What are his initials? A. W. R.

Q. I hand you a little pamphlet signed by W. R. Hoyt. Does that signature compare with the signatures you find in your records?

A. Yes, I think it does.

Q. It seems to be the same? A. Yes.

Mr. HELLENTHAL.—I now have a similar little

(Testimony of Grover C. Winn.)

pamphlet to the exhibit already offered as No. 61, published by authority of Delaney & Gamell, attorneys at law, Juneau, Alaska, and certified to by W. R. Hoyt, as district recorder of the Harris mining district, with the seal of the district attached to it [1151] but without any date. It is for the purpose of supplying the date I have called this witness, to determine the dates. Hoyt was recorder. I will offer the page of the cover and the certificate.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff excepts.

Admitted.

Mr. HELLENTHAL.—The title page of the pamphlet just received in evidence reads as follows: "Local Mining Laws of the Harris Mining District, Alaska. Delaney & Gamel, Attorneys at Law, Juneau, Alaska." And on the last page of the pamphlet occurs the certificate as to its authenticity, which is signed by W. R. Hoyt, district and mining recorder, as follows: "In testimony whereof I have hereunto set my hand and seal this — day of —, 1890. W. R. Hoyt, District and Mining Recorder," and attached to that is the seal of the Harris mining district.

Q. What is that seal?

A. Of the district recorder of the Harris mining district.

(It is understood that this pamphlet contains the same rules and regulations and the same material contained in Exhibit No. 61.)

(Testimony of Grover C. Winn.)

(By Judge WINN.)

Q. Do you know how long the records of what they call the Harris mining district have been in the possession of the official recorder that is, the official recorder who has occupied similar positions that you are now occupying?

A. Well, I wouldn't say offhand because I never had to trace back. I know that Hoyt conducted the trial work and justice work the same as it is at the present time. [1152]

Q. The minutes are kept in an old book down there—you have a book? A. Yes, sir.

Q. And this certified copy that you identified a while ago is taken from that old record-book?

A. Yes. That copy is from the minute-book of the Harris mining district. There were other records—there were the records of the placer locations and also of the lodes and the records of their town meetings.

Q. All the records you have of the old mining district consist of approximately what books?

A. Well, there is the placer recording book and then there is the book of deeds was kept up at that time and transfers and agreements. It was worked on about the same system as we have at the present time.

Q. Is there anything on those records themselves or anything in your office that shows when they were turned over to the United States Commissioner?

A. Not that I have ever come in contact with.

Q. I wish you would look over those old records

(Testimony of Grover C. Winn.)

and I will recall you to-morrow and see if there is anything on the minute-book or the old book of placers or the book of deeds that belong to the old Harris Mining District to indicate when they were turned over to the United States Commissioner.

A. Yes, sir.

(By Mr. SHACKLEFORD.)

We offer a deed from J. P. Corbus to the Alaska-Juneau Gold Mining Company for the Oregon lode, certified to.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception. [1153]

It is admitted as Defendant's Exhibit 62.

Mr. SHACKLEFORD.—We offer a deed from Lindsey to the Alaska Juneau Gold Mining Company, dated November 6, 1910, for the Canyon lode.

Judge WINN.—We object upon the same ground as we object to the other, and that if the location was made on the ground, it was an attempt of the same company to relocate ground which they had forfeited.

Objection overruled. Plaintiff allowed an exception. It is admitted as Defendant's Exhibit 63.

Whereupon court adjourned until to-morrow (June 8), at 10 A. M.

June 8, 1911—Morning Session.

[Testimony of L. D. Mulligan, for Defendant.]

L. D. MULLIGAN, a witness called and sworn in behalf of the defendant, testified as follows:

(By Mr. SHACKLEFORD.)

Q. Where do you reside? A. Treadwell.

Q. You are the same L. D. Mulligan who posted a notice of water location on Gold Creek near the Ebner compressor plant? A. Yes, sir.

Q. When did you post that notice?

A. On August first, 1910.

Q. Did you see anybody on the ground as you went up there? A. No, sir.

Q. There was no appearance of anybody in possession of the ground between there and Snowslide Gulch on that side of the creek? A. No, sir.

Objected to as calling for a conclusion of law. Objection overruled. Plaintiff allowed an exception.

[1154]

Cross-examination.

(By Judge WINN.)

Q. How do you fix that date as being the first of August so surely?

A. That is the day I was sent up there.

Q. Had you been away from the Treadwell for some time prior to that? A. No.

Q. You were there all through June, July and August?

A. I was below in July—came back in July.

Q. Do you remember the date you got back?

A. I think the 27th of July.

(Testimony of L. D. Mulligan.)

Q. Did you come back before Bradley got here or afterwards?

A. Afterwards—he had been here and gone away before I got back.

Q. Before you got here? A. Yes, sir.

Q. When did you have that notice recorded—do you remember the date you had it recorded with Grover Winn? A. No, I do not.

Q. Who delivered that to Grover Winn for recording—did you deliver it or did you turn it over to Mr. Kinzie? A. I turned it over to Kinzie.

Q. How long after you posted it up on the creek did you turn it over to him?

A. The next morning.

Q. Of course, you don't know what date he recorded it? A. No, I do not.

(By the COURT.)

Q. How long had Mr. Bradley been gone?

A. I don't know.

Q. You are sure he was gone?

A. Yes; he was gone before I came back.

By the COURT.—What is the date of the recording of that notice?

Mr. HELLENTHAL.—August 8th.

Witness excused. [1155]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE, Recalled.

(By Mr. SHACKLEFORD.)

Q. There has been some reference made to a statement made by you in your examination two or three

(Testimony of R. A. Kinzie.)

days ago to the effect that the rock about which there has been so much discussion on the left limit of the Borean pit was twice the size of the courtroom. I wish you would state what your recollection is about it and what you intended to state.

A. I don't remember that I attempted to describe the size of the boulder itself, but in describing the slide I think the question was asked as to the size of the pieces that would come down, and I stated that in slides of that nature pieces could come down anywhere from the size of this courtroom to twice the size of the courtroom—it wasn't my intention to say that that particular piece was that size.

(By Judge WINN.)

Q. You are sure you didn't state on the witness-stand the other day that you discovered in this pit or somewhere around it, or in the bottom of it, a piece of slide of that size?

A. No; I did not discover a piece of that size.

Q. And you didn't testify to that effect?

A. No, I did not; at least, I had no intention to testify to that effect and I don't remember I did.

Q. Where did you ever see any pieces of that size in the neighborhood of Parish #2 lode claim or on it?

A. I have never seen them on the Parish No. 2 except in describing slides of that nature, pieces of that size. I have seen them—not a great many instances.

Witness excused.

**[Recital Re Testimony of G. C. Winn, for Defendant
(Recalled).]**

G. C. WINN, recalled.

(His testimony is entirely regarding Lotta.)

With the privilege of later introducing certain photographs of the Borean Pit now being prepared and recalling Mr. Stewart to plat in the Lotta according to Ebner's testimony

Defendant rests. [1156]

. Rebuttal.

**[Testimony of John G. Heid, for Plaintiff (in
Rebuttal).]**

JOHN G. HEID, called as witness in behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You are an attorney at law residing at Juneau?

A. Yes, sir.

Q. How long have you been practicing law in Alaska?

A. Since 1885. I came here in 1885.

Q. Who, if anyone, was occupying the position of Judge for the District Court of Alaska at that time or U. S. District Court for Alaska, perhaps it was termed?

A. The first one was Ward McAllister, Jr.

Q. Do you remember approximately the time he came here with reference to the time you arrived here?

(Testimony of John G. Heid.)

A. He came a few months before I did—he came in the fall of 1884.

Q. He was the first judge you had here, U. S. District Judge? A. Yes, sir.

Q. How long did he stay here, do you remember?

A. He went back to Cleveland—he was removed some time in the spring of 1885—he didn't stay very long.

Q. Then who followed him?

A. Judge Dawson.

Q. You were here in the days when they had some sort of a miners' organization—do you know what they called it?

A. The miners of the Harris Mining District is about all I remember they called it.

Q. I will ask you if you remember the incident of having the records of that organization turned over to the U. S. Commissioner at Juneau.

A. I know in 1886 I was elected the mining recorder—the fall of that year Judge Dawson held court here; it may have been [1157] October or November, some time in the fall, and he made an order requiring me to turn the records over to the United States Commissioner and established this as the recording district, which I did.

Q. Why was that done, do you know?

A. The statute provides that the Court has authority, in fact, directs the Court to establish recording districts and designating the commissioners as recorder, and it was under that organic act that Dawson made that ruling, and I delivered over the rec-

(Testimony of John G. Heid.)

ords to the commissioner at that time, to Judge Williams, the commissioner.

Q. Did that organization have any meetings after that that you remember?

A. It seems to me they had one meeting after that—I didn't attend it. I really don't know what the object of that meeting was, but they had one meeting, and my recollection is it was for the purpose of—

Objected to. Sustained.

WITNESS.—(Continuing.) I want to explain. At the time that Judge Dawson made this order requiring the mining recorder to turn over the records of the Harris Mining District to the commissioner who was designated as the proper recorder for this section of the recording district by the Judge, some of the miners didn't quite like it—there was some discussion—some of them got together and wanted to continue the mining recorder. The following year they held a meeting for the purpose of placing someone in nomination and came to me and wanted me to run again. I said, no, I would have nothing to do with it, as long as the Court has directed me to turn the records over to him. I told them it would be a dangerous experiment because it might raise a question as [1158] to the validity of the records by having a mining recorder and the Court having appointed a commissioner as recorder. I advised them to elect the commissioner the recorder so as to avoid all possibility of a question of legality with reference to the records, and they did.

(Testimony of John G. Heid.)

Q. Was that the last meeting you ever remember of them having here?

A. That is the only one I remember—I didn't attend any of them.

Q. What was this camp in 1884 and 5—was it a placer or quartz mining district?

A. It was a placer camp.

Q. Were there any quartz-mills in operation at all in Southeastern Alaska then?

A. At the time the Treadwell was beginning, that is all, making preparations with a view to erecting a mill there, that is about all there was and there was the old Webster mill up there,—I believe the Webster was operating the Humboldt on Gold Creek.

Q. Do you ever remember of any decision by any of those early Judges concerning the application of these miners' rules and regulations?

A. I don't remember. At that time what litigation there was, was more over the possession of mining ground. There was some litigation also with reference to the rights of water and water rights but I don't remember of having been in any of those cases. I was in one—I lost that but I don't remember much about it.

Q. Mr. Hellenthal has offered in evidence here an old pamphlet of the miners' rules and regulations that seems to have been published by John G. Heid and G. W. Garside in 1886. Look at that pamphlet and see if you remember anything about you and [1159] Garside publishing that?

A. Yes; I remember that we published that.

(Testimony of John G. Heid.)

Q. Is the year indicated on the back of the book there correct?

A. I will tell you how that happened. That is the time I certified it. In the application for patents which I had in hand then I had to file a certified copy of the rules and regulations of the district with each application and I simply gave the printer one of those copies and he set it up, and it was my mistake possibly or oversight he added also that certificate that is attached there.

Q. Do you know anything about this publication by Delaney & Gamel?

A. No, I don't know whether they copied that from this or where—evidently they got it from the record books. I don't know.

(By Mr. HELLENTHAL.)

Q. That meeting of the miners of which you spoke in 1885 and 6,—they elected the United States Commissioner as recorder, you say? A. Yes.

Q. This little book that purports on the title page to be published by yourself as one of the publishers in 1886 is just a pamphlet of the mining rules?

A. As they then existed, yes. Of course we had to file one with each application for patent and there was so much writing, we had them printed.

Q. This little book was generally circulated among miners?

A. We had quite a number of them; yes.

Q. You knew Judge Delaney? A. Yes.

Q. You knew him in 1890? A. Yes, sir.

Q. He was in partnership with Gamel and prac-

(Testimony of John G. Heid.)

ting law in Juneau? A. Yes, sir. [1160]

Q. And Delaney was afterwards United States Judge for this district? A. Yes, sir.

Q. Do you remember the time he published this little pamphlet?

A. I don't remember. I know they had one out—they did the same as we did because it took so much writing. We had no typewriters at that time and had to write them out, and for the purpose of saving time we had them published.

Q. Weren't those books of Judge Delaney circulated among the miners?

A. I suppose they were as far as I know. I have seen them around.

Q. You have seen them around and different people had them? A. Yes, I have seen them.

Witness excused.

[Recital Re Testimony of Martin George, for Plaintiff (in Rebuttal.)]

(Martin George sworn. His testimony is entirely regarding the Lotta.) [1161]

[Testimony of Lloyd Winter, for Plaintiff (Recalled in Rebuttal).]

LLOYD WINTER, recalled.

(By Judge WINN.)

Q. What day was it you went up with Mr. Ebner last to take some photographs on the Ebner property, when you got these photographs I hold in my hand? A. The date is on the photograph.

Q. Tell me what date. (Handing with the photographs.) A. On the 6th of June.

(Testimony of Lloyd Winter.)

Q. On the 6th of June you went up to the Ebner property with Mr. Ebner? A. Yes, sir.

Q. Take this photograph which is marked Plaintiff's Exhibit "PP" (it is so marked). Was that taken on the date you have just mentioned?

A. That picture was made on the 6th day of June.

Q. On the ground? A. On the ground; yes.

Q. Who went with you up there that day?

A. Mr. Ebner, Mr. Mackey and some other gentleman with them. I don't recall his name.

Q. You know where the Borean pit is, don't you?

A. This is a view taken in the Borean pit.

Q. Where did you set your instrument to take that photograph with reference to the objects shown on there? A. Right in the centre of the pit.

Q. What is that large formation that seems to protrude there from the mountainside?

A. A mound of rock with some stringers in it, quartz stringers.

Q. Was this pointed out to you by Mr. Ebner as the rock that has been claimed by the defendant in this case to be a boulder? A. Yes, sir.

Q. That is the rock that shows there?

A. Yes. [1162]

Q. I wish you would show the Court whether or not this photograph shows up all the stringers of quartz that you saw upon this formation in the pit.

A. One stringer is to the left here.

By the COURT.—Mark it at each end—A at one end and A at the other.

(Witness does so.)

(Testimony of Lloyd Winter.)

Q. Describe to the Court the different stringers that are shown there and also if there are any stringers not shown describe where they are and explain why they don't show in the picture.

A. The parallel stringer on the right-hand side is in a decomposed condition, of brown and green in color, that does not come out as plain as the white or rose colored quartz on the left.

Q. How many different stringers have you marked on this photograph? A. Two.

Q. Are there any others there that are noticeable on the photograph—some smaller ones are there?

A. They are scattered—the one on the left is well defined.

Q. You examined the rock for the purpose of ascertaining about those stringers, did you not?

A. I was there at the time the examination took place.

Q. I will hand you this photograph, marked Defendant's Exhibit "QQ," and ask you who took that photograph?

A. The photograph was made the same day, the 6th day of June—it was taken up on the bench, directly above Gold Creek, and this photograph "QQ" is made looking on a direct line toward the Borean pit.

Q. "QQ" was taken down near the creek?

A. Near Gold Creek.

Q. And the one at the Borean pit and with the formation you [1163] have been testifying concerning is right on up the hill in a straight line?

A. Yes, in the same direction—the photographs

(Testimony of Lloyd Winter.)

are taken in the same line as the trend of the veins or fissures shown in the photograph.

Q. What are the objects, the permanent objects, in this photograph "QQ" you were requested to have shown in the photograph?

A. Quite a number of pieces of quartz and an open cut.

Q. Who pointed this out to you and at whose instance and request did you take the photograph?

A. By direction of Mr. Ebner and Mr. Mackey.

Q. It shows the things as they were there on the ground that day? A. Exactly so.

Q. Now, I will ask you if you noticed those pieces of quartz as shown in there to ascertain whether they had been lately excavated or had been in the condition they are on the ground there now for some time.

A. I noticed from the condition of moss as shown in the photograph on the quartz that they had been there for a number of years.

Q. Does that open cut show up in the picture there? A. It does.

Q. Can you give somewhat of a description of that open cut?

A. Oh, it has the appearance of some little workings there, of an open cut, and that quartz had been thrown to one side as it has been shown here in the photograph.

Q. Did you see any formation in this open cut similar to this piece of quartz thrown outside there?

A. It was the same character of ore, in fact, there was considerable of it along the creek—the photograph shows that. [1164]

(Testimony of Lloyd Winter.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. Which side of the Borean pit as you stand looking up the hill is that boulder on, in Exhibit "PP"?

A. I am right in the centre of the pit, varying possibly a little to the shelf on this lower side and am looking up the canyon.

Q. Up the same direction as the creek?

A. Yes.

Q. Is that the same boulder taken from a different side view, or the same piece of rock? I hand you Exhibit #9.

A. That is the same boulder and the same condition, with the exception that my photograph is taken within a few feet of that rock; that is in this picture.

Q. Your photograph was taken so as to include the rock?

A. Include the entire face of it, looking towards this way, but it is the same rock.

Q. In this "QQ," the quartz you refer to is the white quartz there? A. Yes, it is all quartz.

Q. Quartz float, is it not? A. Yes.

(By Judge WINN.)

Q. What do you mean by quartz float?

A. It would be pieces of quartz that are separated from the ledge and lying to one side—it might be within a foot, it might be within half a mile of the ledge. It would be float because it is not in place.

Q. But you saw quartz of this kind in the open cut that the photograph represents?

(Testimony of Lloyd Winter.)

A. Indications of it.

Q. How is that photograph, Defendant's Exhibit 9, taken?

A. It is taken a little lower down, while mine is taken showing the face of it, the front view. [1165]

Q. Your photograph is—

A. My photograph is a front view of that, taken directly in front of its face.

Q. (By the COURT.) Yours is looking across the pit and the other is looking up the pit?

A. Yes, sir.

(By Mr. SHACKLEFORD.)

Q. You remember a moment ago stating in answer to a question of Judge Winn that you found there quartz similar to the float mentioned in "QQ." Now, where is that—is it in the picture or somewhere that is not in the picture?

A. It is in the picture, in the open cut.

Q. Just mark it.

(Witness does so—on "QQ.")

Q. They are all marked with an "O"?

A. This is all quartz and this is more of a solid formation—that was float and this is comparatively in solid formation.

Q. It may be there in the Buried boulder or it may be in place.

A. Yes, I didn't excavate around there to find out but it had that appearance—it might be quartz. It had come from this open cut—there were some little stringers like that.

Q. And that is a slab of rock that appears in rough

(Testimony of Lloyd Winter.)

shape on the side of the hill? A. Yes, sir.

Q. As to its depth, you don't know anything about it? A. No.

(By Judge WINN.)

Q. I believe you mentioned some other place where the quartz showed up in one of these photographs. Just call it to the Court's attention, if there is any ground there besides up at the Borean pit or in this open cut—is there any surface ground that shows there in either one of the pictures?

A. To the left and along the line of "A-A" in exhibit "PP," but it is not as plain as the stringer marked "A-A" on the [1166] a result of the discoloration of the quartz. I didn't have a color screen with me. If I had a color screen, that would bring out that quartz stringer running through here.

Witness excused.

[Testimony of Wm. M. Ebner, for Plaintiff (Recalled in Rebuttal).]

WM. M. EBNER, recalled in rebuttal.

(By Judge WINN.)

Q. You just heard the testimony of Mr. Winter on the stand? A. Yes, sir.

Q. You have heard him identify this exhibit "QQ"? A. Yes, sir.

Q. I will ask you to look at that and state just what particular object you directed Mr. Winter's attention to, to have show in that picture.

A. I directed his attention that I wanted to get in this quartz that was piled out here and as much of this open cut as was possible, and this is the result.

(Testimony of William M. Ebner.)

Q. What open cut is that?

A. That was an open cut that was made there in 1901.

Q. Is that the open cut you testified concerning on either your cross or direct examination?

A. I did, in one of those; yes, sir—probably both.

Q. How far is that from the bank of the creek?

A. You can almost see the bank of the creek here. It drops right off here to the right. This quartz piled here is not over ten feet from the bank of the creek—the bank of Gold Creek—but it is steep bank there and a high bank and a long distance down to the creek.

Q. Were you there when that photograph “PP” was taken? A. Yes, sir.

Q. What prominent objects, if any, did you request Mr. Winter to [1167] have show in that picture as well as possible?

A. I wanted him to take this reef that is exposed here and show up as plain as possible the two fractures of quartz shown in the reef.

Q. With respect to the face, where did you have him set his instrument, at one side or out in front of him?

A. No; right on the trend of the formation—it would be southeast, facing northwest.

Q. I will ask you to state the relative positions of the objects that are represented in those two pictures and also with respect to Gold Creek.

A. This one is taken in the Borean pit about 300 feet from Gold Creek—this one marked “PP”; the

(Testimony of William M. Ebner.)

one marked "QQ" is taken right on the bank very close to the creek—they were taken practically in this manner.

Q. One right in line with the other, going up the creek?

A. Yes; the one marked "QQ" was taken looking southeast and the one marked "PP" was taken looking northwest.

Q. Where are those particular objects on there with respect to the Parish No. 2 lode claim?

A. The one marked "PP" is just about the discovery and the one marked "QQ" is on the centre line, I should say, about 600 feet distant from that; something like that—I will not be sure of that distance.

Q. You heard Mr. Stewart testify yesterday that he went down about this vicinity to look for the open cut and didn't see any—if he had gone down to this object, could he have seen it on the ground?

A. He certainly could because you can see it from the road.

Q. How are those two photographs, with respect to the centre of the Parish #2—are they along the centre or are they at [1168] one side of the centre of the lode line of the Parish #2?

A. Very close to the centre.

Q. Where did that quartz come from?

A. It came from this open cut. We drove this open cut in here and washed this out and found a ledge just about where it shows, about three feet from this rock here. I think it is just about three feet from there, if I remember right. It was in

(Testimony of William M. Ebner.)

this open cut, and this quartz came from the ledge, a ledge about 12 inches. I don't remember exactly.

Q. In the open cut? A. Yes.

Q. Was that rock in place? A. Yes, sir.

Q. When did you do that excavation and throw out these pieces of quartz on the side there?

A. I think it was in the fall of 1901.

Q. Is that mineral-bearing quartz?

A. Yes, sir; I only assayed for gold.

Q. Is that some of the rock you testified to Mr. Shackleford you had assayed? A. Yes.

Q. I will ask you to state briefly as to whether or not that is a bedrock or other formation from which these pieces of quartz were taken.

A. In starting close to the creek and bringing down the water there is a gulch comes down. We washed off and cleaned off starting close to the creek and went back from the creek until we found this streak of quartz or ledge of quartz and we went somewhat beyond it—

Q. Up towards the Borean pit?

A. No, up the mountain further and almost in a direction east—this open cut was almost east and west, and the further up we washed, why the heavier the debris. This was more for the purpose of ascertaining whether this ledge that shows up in [1169] Snowslide Gulch, in the Borean pit, continued through, and as soon as we ascertained that, why that is about all the work we did there.

Q. I will ask you if since you were on the witness-stand before you went upon the ground up there and

(Testimony of William M. Ebner.)

made any examination of the formation along up from the creek, about in line with the open cut that shows in this exhibit, on up towards the Borean pit? A. Yes, sir.

Q. Tell the Court what you did there.

A. About halfway between these two places I made a ditch, brought the water and we cut the roots, got down to bedrock in some places and when we got on the line, that appeared to go down on the bedrock, we found two stringers there, two fractures, the same as they show in the Borean pit, only a little closer together.

Q. Who was with you when you made this examination that you have just detailed—since you were on the witness-stand before?

A. Mr. Mackey and Mr. Graham.

Q. You heard Mr. Stewart testify that when he went up there on a certain day he saw there had been some dirt recently removed, etc. Have you been up there just before Mr. Stewart went up—in the Borean pit? A. Yes.

Q. How about these other uncoverings that you have made—had you made those before Mr. Stewart went up? I mean in regard to this open cut.

A. There has not been anything done there since 1901 or 2—I think there was some work done there in 1902. [1170]

Q. Did you do anything to alter the appearance of the ground as it was when you first testified than it was the day Stewart testified? He said he saw a lot of loose dirt that he thought had been dug up in

(Testimony of William M. Ebner.)

some places. Had you been up there before Stewart in any place and done any digging around there?

A. Yes, in the Borean pit.

Q. I will ask you if you ever went up towards Snowslide Gulch to make any investigations to see whether or not that formation continued on up to Snowslide Gulch?

A. Yes, I did. I found it in Snowslide Gulch, on the south side of Snowslide Gulch—in Snowslide Gulch, practically, and also on the north side, as far as the bedrock was concerned, I found the same dyke that cuts through there, or reef, with quartz.

Q. And it carries what sort of precious metal?

A. Gold.

Q. How was the dip of that formation and its trend, etc., up to Snowslide Gulch compared with what it is down about the Borean pit and down about where you have described that this open cut is?

A. The trend of the formation is southeast and northwest and the dip of the formation is to the northeast and varies from 50 to 60°.

Q. You heard the testimony of several of the witnesses on the part of the defendant concerning what they term a fault up there about Snowslide Gulch. I wish you would explain what you know about this, what they term a "fault."

A. There is no fault visible in Snowslide Gulch anywheres where bedrock is exposed. I have never seen any. I have never seen anyone who has examined it that ever said there [1171] was, but there is a fault on the other side of the mountain and Mr.

(Testimony of William M. Ebner.)

Spencer termed it not a "deep-seated fault."

Mr. SHACKLEFORD.—Mr. Spencer told you?

A. Yes, sir.

(Stricken out.)

Q. Were you testifying about what Mr. Spencer said from a conversation you had with him or from what you read in one of the reports?

A. Both that and also from personal observation.

(Stricken as hearsay.)

Q. Were you here when Mr. Spencer was here—when was that? A. 1904—yes, sir, I was here.

Q. And you have since read his report on that country up there? A. Yes, sir.

Q. Explain to the Court what you mean by a fault.

A. A fault is a faulting in the formation or, in other words, a break. There are two kinds of fault. There are some faults that take place that shift the formation, throw it one side, and the other—this fault, or, as they term it, the Silver Bow Basin fault,—is more in the nature of a slide of a large portion of the country; in other words, this slide or faulting took place from Icy Gulch to another gulch that I think is called Quartz Gulch, and the formation has simply taken a shift and the northwesterly end of that formation has slid down to what we call the Nowell Placer Creek; and in the tunnel driven by Lukes some years ago, he started in on the lower edge of that fault and after he had driven the tunnel in some distance, he went through the fault and the mineral belt, the vein on the Alaska-Juneau from Quartz Gulch southeast is down the hill and does not

(Testimony of William M. Ebner.)

jibe with that up the hill or the continuation from the Ebner to the Alaska-Juneau. [1172]

Q. Mr. Kinzie described something about the fault down here close to Snowslide Gulch, which he claims was represented on one of those plates taken from this Geological Report of Spencer—you heard Mr. Kinzie's testimony on that? A. Yes, sir.

Q. You also saw that exhibit he was testifying from? A. Yes, sir.

Q. Explain to the Court what you know about that.

A. That only comes part way. It doesn't come over to Snowslide Gulch. It is not so represented in Spencer's report.

Q. Does it come down on any of your property?

A. No.

Q. That is on the Ebner Gold Mining Company property? A. No, it does not.

Q. You heard Mr. Stewart's testimony yesterday afternoon about making some excavations, etc., in the Borean Pit? A. Yes.

Q. I will ask you if you made a trip up there since Stewart did this work he testified concerning?

A. Yes, sir.

Q. When did you go up there?

A. I went up early this morning.

Q. Who went with you?

A. Mackey and Graham.

Q. Did you go up to the Borean pit where this excavation and blasting was done by Stewart?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. I wish you would explain to the Court just what changes, if any, have been made in the surroundings there from what they were when your testimony was given before.

A. Why, this reef that is shown here in this picture "PP," looking in a northwesterly direction, it only shows the face of it and does not go down quite low enough to show all of it. [1173]

(Witness is handed Defendant's Exhibit 9 and Plaintiff's "PP.")

WITNESS.—(Continuing.) This picture here shows the face of this and is taken along the trend to the northwest and dipping to the northeast. This particular reef, as far as you can tell, has exposed dips on an angle of about 50° , and we will say that is the trend and this is the face (indicating)—something like that. Stewart went to work and dug a pit on the southwest side of it, down by the side, about 2 feet wide and about three or three and one-half feet long, until he reached down to the disintegrated greenstone footwall, and then he seemed to have stopped right there, and that is probably where he got his samples—according to his testimony that is where he got his samples. Now, if he had carried his excavations four to six inches, not to exceed 6 inches further to the east, he would have broken into the footwall proper—in other words, he would have broken into the reef itself.

Q. When you say reef you mean that formation there that they call a boulder?

A. They called it metagabbro. I call it a reef. It

(Testimony of William M. Ebner.)

is an intrusive diorite dyke altered to a brown diorite dyke.

Q. I understand you to say that if Mr. Stewart had just done a little excavation to one side, he would have gone down and struck this same formation they call the boulder there? A. Yes, sir.

Q. In other words, he would have crossed the line of contact between the greenstone and the diorite?

A. Yes, he went down just to one side, just so he stuck to the side of it, under the lea or under the dip of this reef, but if he had gone a little further he would have gotten [1174] into the diorite, in the solid—it is all somewhat decomposed just at that particular place, but the bedrock of this diorite being harder than the greenstone sticks up in the pit in front of the main reef or in front of what they call the boulder. If he had gone as far as those he would have got across the contact and then his samples, if he had taken them deep enough, taken his greenstone—I don't know what he had; he could have gotten the greenstone which is in the contact and the diorite itself—which is the mineral-bearing rock.

Q. You took those parties up there and did a little digging yourself this morning and found out the facts you have just testified concerning?

A. Yes, sir.

Q. Did you go down in this hole that Stewart sunk there, which he said came up to about the top of his head—did you go down in that? A. Yes, sir.

Q. And what did you find on the bottom of it?

A. We found a disintegrated greenstone in the

(Testimony of William M. Ebner.)

bottom—there had been some cave-in of some of the drift material and we got some out of the bottom of that and then we excavated further to the east and got to the contact and got a piece of the hard diorite itself.

Q. I wish you would take those two packages of rock and state to the Court just from what places they came with reference to the testimony you have just been giving—the pieces that show up some quartz.

A. This greenstone—this is an excavation we made this morning—this is right close to the contact, right at the contact. (It [1175] is marked “RR.”) This piece is on the contact too, belong to the diorite.

Q. Is this piece what is known and recognized up there as the rock that carries value, any value?

A. Yes, sir.

Q. Is this piece of rock just the way it appears or is this somewhat decomposed?

A. That is somewhat decomposed—that is right close to the contact—that is about the width of it. (The piece is marked “SS.”) This piece is just a little further in, going into the decomposed diorite—it is a piece of solid diorite.

Q. That is the mineral-bearing rock up there?

A. Yes, sir. (It is marked “TT.”) Now, this piece is part of the same reef only about seven or eight feet higher up, on the same rock.

Q. You mean that formation that protrudes out into the Borean pit?

A. Yes, sir. (It is marked “UU.”)

(Testimony of William M. Ebner.)

Q. Just select some pieces you have taken of the quartz that you have been testifying concerning along up the line of your discovery on the Parish #2 lode claim.

A. This is from the face of the reef; this is from the left-hand fracture or stringer and these are from the right-hand fracture; these rocks here are between and on each side.

Q. When you refer to the reef, I understand you refer to the formation that these other people have been calling a boulder? A. Yes, sir.

(The rocks referred to in the last answer are marked "VV.")

Q. Where did you get that piece of rock you have in your hand?

A. I got this between 6 and 700 feet distant on the trend going from the Borean pit in a southeasterly direction, on the [1176] south side of Snowslide Gulch and belonging to this same reef.

Q. And about how far from the Borean pit?

A. About 600 feet—between 6 and 700 feet on the trend.

Q. What kind of rock is that?

A. That is a diorite.

Q. Does it carry values in gold and silver in this property? A. It does. (It is marked "WW.")

Judge WINN.—I want to offer in evidence exhibits "PP" and "QQ."

They are received.

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. The rock exhibited in photograph "PP" is the

(Testimony of William M. Ebner.)

rock under which Mr. Stewart is excavating?

A. Yes, sir.

Q. And that is the rock upon which you claim to have made your original discovery?

A. Yes, that is one of them—that is where I made my first discovery.

Q. In 1899? A. Yes, sir.

Q. So that your original discovery as described in your location notice is not correct?

A. I don't know.

Q. Have you examined your location notice?

A. I have not.

Q. How far above the level of Gold Creek is the spot represented in exhibit "QQ"?

A. I should estimate that it was between 80 and 100 feet.

Q. In height?

A. In height—that is the bank slopes off quite perpendicularly and this is up on the bank.

Q. So if you testified it was in the canyon last Saturday [1177] night, about 20 feet below the lower tunnel, you were mistaken in that respect?

A. I don't think I testified that. If I said canyon I meant from mountain to mountain. I didn't mean the narrow canyon of the creek.

Q. You mean it was more than 20 feet away from that tunnel—a good deal more than 20 feet?

A. Yes; I think I said about 20 feet to the south or southeast and then up on the bank in the open cut.

Q. The rocks in the foreground are flat, the white rocks?

(Testimony of William M. Ebner.)

A. They are rocks that were taken out of the pit here, broken off the ledge, that are in place in the rock there.

Q. You know as a matter of fact that that rock shows to the extreme left of that picture as coming out from under the surface?

A. Not this rock—that is not the rock.

Q. Where is the rock that is in place?

A. It can't be shown—this has not been disturbed; it is right in along here.

Q. It is under that rock?

A. No, this is slide; the water has brought in a lot of rock and slide and gravel there.

Q. The picture doesn't exhibit a rock in place?

A. No, it might exhibit some of the quartz—I wouldn't be sure about that.

Q. And what is the character of that rock?

A. That is a white quartz, carrying pyrites.

Q. What does it contain?

A. I have assayed it and it contains gold.

Q. What are the walls of the white quartz there?

A. Diorite. [1178]

Q. On both sides?

A. I think so—I think in both sides.

Q. You are in schist there? A. No.

Q. Is there any diorite on the creek below that?

A. I think there is. I wouldn't be certain about that but I think it shows in the creek.

Q. The quartz shows in the creek?

A. That I wouldn't say. That is a very steep place where that comes down—I think it does,

(Testimony of William M. Ebner.)

though. I wouldn't be certain about that.

Q. And in your opinion that is part of the same ledge that runs through the rock that we claim is a boulder in the Borean pit?

A. It is in line with the Borean pit and the rock showing there and also the discovery between this and the Borean pit.

Q. There is no discovery between this and the Borean pit? A. Yes, sir.

Q. Did you testify about that last Saturday morning or Saturday night when I asked you to name all your discoveries? A. I think I did.

Q. Now, you want the Court to understand that the rock in the Borean pit of which you have introduced a photograph this morning is rock in place?

A. Yes, sir.

Q. And you also want the Court to understand that the fault line does not run through Snowslide Gulch? A. Yes, sir.

Q. I will hand you Plaintiff's Exhibit 59 and ask you if it is not so indicated thereon.

A. No, sir; it does not come down Snowslide Gulch; it stops on [1179] top of the mountain—this black line is the turn of the fault and here is the end of the fault; those two are the summit there and it stops right there; that little stream marked there is supposed to be Snowslide Gulch.

Q. And if you follow up Snowslide Gulch you strike the fault line?

A. If you go way up on top of the high mountain and going down on the other side, then you strike the

(Testimony of William M. Ebner.)

fault or saddle.

Q. The top of Snowslide Gulch is not the mountain? A. No.

Q. It is usually considered by geologists as an indication of a fault—the saddle?

A. Not necessarily.

Q. That is one of the known indications of the fault—a saddle in the rise?

A. No, a saddle in the rise may occur from a softer formation.

Q. It is one of the known indications of faulting?

A. It might be.

Q. It is so considered, is it not?

A. Not altogether; no, sir.

Q. It is the badge of faulting, a geological badge of faulting, a saddle and summit?

A. Not always; no, sir.

Q. It is one of the indications?

A. Yes, sir; it is one of the indications.

Q. I want you to locate the place where you found the rock exhibited in “QQ” with reference to a line drawn across Gold Creek marked footwall boundary of lode system.

A. This is approximate. It is on a very small scale—I will mark it “D”—that is approximate; it is between the two gulches there. [1180]

Q. That is to the south of the footwall boundary of the lode system? Of the Juneau gold belt lode system?

A. It is as marked on that—that is the principal lode system of the Juneau lode belt; it lies to the

(Testimony of William M. Ebner.)

southwest of it.

Q. I now call your attention to a plate marked Bulletin 287, Plate 9, and ask you if the faulting of the Juneau gold belt and the system of mills there do not correspond with the same as shown on exhibit 59. I will have this plate marked exhibit 66. (It is so marked.)

A. Yes, they correspond very close.

Q. In a general way, that shows correctly?

A. In a general way, it does; yes.

Q. Where do your schists appear in Gold Creek?

A. There are schists found from Granite Creek down to Snowslide Gulch and Gastineau Channel.

Q. I am talking of the cross-section of Gold Creek through that belt, with reference to the position of your compressor plant or what is sometimes called the New Mill on the Lotta, as claimed by you?

A. On the Lotta we have schists above the new compressor building and below and a diorite belt between.

Q. Where does the schist commence?

A. I think it commences close up to the head of the steps that go up. It is probably on the northeast side line of the Lotta—I think that is about where it commences. It is a narrow belt of schist there, and then here is a belt of diorite interspersed with quartz veins.

Q. Northeast side line of the Lotta?

A. Yes, along about that place.

Recess to 1:30. [1181]

(Testimony of William M. Ebner.)

Afternoon Session.

Continuation of the cross-examination of Mr. EBNER by Mr. SHACKLEFORD.

Q. I am going to read to you a statement with reference to the Silver Bow Fault, page 71 of the Bulletin by Mr. Spencer, on the Juneau gold belt, 1906. "The difference in the bedrock formations on the two sides of Quartz Gulch is the result of the transverse fault running approximately N. 72° E. from the saddle between Snowslide and Quartz Gulches and following the general course of the latter stream. The precise direction of the movement upon this fault, whether vertical or inclined, has not been made out, but the horizontal displacement of the slate band which has been indicated on the map would result if the southeastern block were either uplifted or thrust toward the northeast, the direction of hade is not known, but the inclination of the fault surface is supposed to be toward the northerly or downthrown block. The failure to trace the fault toward the west, though possibly chargeable to the lack of exposures, suggests this interpretation, since this structure would carry the line of the break down Snowslide Gulch." Now, is that statement a correct statement of the situation as developed upon the ground here with reference to the faulting known as the Silver Bow fault?

A. It is. Now, what portion of the saddle does he refer to? That saddle is about half a mile long—almost level.

Q. He refers to the map, and I call your attention

(Testimony of William M. Ebner.)

to the fact that the throw of the fault comes a considerable distance down above the upper ridges of Snowslide Gulch as indicated on that map.

A. That is very true, but Snowslide Gulch heads way upon the [1182] saddle, nearly half a mile from the southwestern end of the saddle, at the head of Snowslide Gulch and the fault only comes to the top. This is a little different map than the one you had this morning and does not show it quite so plain. The other shows that it only comes about to the centre of the ridge.

Q. It comes beyond the centre of the ridge because the drainage there for a considerable distance is into the Snowslide drainage area, is it not?

A. Yes, to a certain extent it is, but the saddle is over half a mile long.

Q. (By the COURT.) You mean along the ridge or over the ridge? A. Over the ridge.

Q. There is an apex to that saddle, as indicated by the drainage areas? A. There is, yes, sir.

Q. And it follows over that apex and down on this side,—beyond the apex of the saddle?

A. It follows a portion of the saddle, about the centre of the saddle, probably, is about the highest point and it slopes very gradually toward Snowslide Gulch—the other portion slopes the other way—what we call Snowslide Gulch is that portion which is very steep, not the saddle.

Q. The maps and the statement of Mr. Spencer in the report are, generally speaking, correct, are they not? A. Yes.

(Testimony of William M. Ebner.)

Q. And they are, generally speaking, correct with reference to the location of the fault?

A. Yes, sir.

Q. I will hand you Plate #19 (Nineteen) of Bulletin 287 and ask you whether that represents a fault or a slide?

A. That represents a slide.

Q. Where did you get those pieces of rock—marked “WW”? [1183]

A. That comes from the south side of Snowslide Gulch.

Q. How far from the Borean Pit?

A. Between six and seven hundred feet.

Q. When did you get that?

A. I got that Monday evening.

Q. How many inches did you say, if Mr. Stewart had gone over in his tunnel, he would have struck the roots of the boulder exposed in your exhibit “PP”? A. Not more than four inches.

Q. When you went up there, did you go that far?

A. Yes, sir.

Q. You went under it? A. Yes, sir.

Q. You found the roots of that boulder?

A. Not the roots of the boulder—there is no boulder there.

Q. The roots of the rock we claim is a boulder?

A. We saw where the rock goes down out of sight. I don't know where the roots of it is.

Q. Your claim is it is an intrusive diorite?

A. Yes, sir.

Q. And not slide matter at all? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. And that you had gone up there and found—had gone about four inches and found where it had gone out of sight?

A. We found the contact between the greenstone and the diorite.

Q. What about the boulder, did you trace it down—the rock claimed to be a boulder?

A. No; when we found the contact, we didn't go down any further.

Q. That part of the contact, this marked "RR"?

A. That is close to the contact—it is a greenstone or schist.

Q. It took that form of rock in place?

A. Yes, sir.

Q. That is not float? A. No, sir. [1184]

Q. It doesn't show any indications on its edges or otherwise of having been float?

A. Not to me it don't; no, sir.

Q. I will now hand you exhibit No. 55 and ask you if that was found underneath the rock we claim is a boulder—how do you explain its presence under there, tightly imbedded under the rock?

A. I don't know where it was found except what Mr. Stewart testified to, and if it was found in his excavation that he made, it was found under the dip of the boulder, what you call a boulder, but under the roof—

Q. The roof has a dip of 50°?

A. Yes, about 50°, and this was under the overhanging portion of this roof and was probably brought there by the glacier—that is a glacier de-

(Testimony of William M. Ebner.)

posit and it is a piece of micaceous gravel, pretty well decomposed.

Q. Do you know any place south of the line, known as, indicated on that map as the footwall boundary, whether there is any other intrusive diorite through that schist belt there? I mean down the creek from there. A. Yes, sir.

Q. Which way does that boulder dip? I mean the rock in dispute. A. It dips to the northeast.

(By Judge WINN.)

Q. I will ask you whether or not you have in your possession any copy of the option which you gave to Mr. Underwood? A. I have not.

Q. Did you ever have a signed copy, that is, a duplicate or triplicate original of the paper itself?

A. No, sir. [1185]

Q. Have you in your possession now or in California a copy of the option in any form or shape?

A. No, sir.

Q. Who, if anyone, took the originals or original—who took them?

A. The original, which was supposed to be mine, was deposited, together with all my papers, with the Van Orton Trust Co., and I had a copy, an unsigned copy, and about eight months or so ago I sent them to my attorney, Mr. Cox of New York.

Q. Now, what was this option upon—what did it propose to sell?

Objected to as incompetent, irrelevant and immaterial.

Judge WINN.—On the 15th day of May I sent

(Testimony of William M. Ebner.)

George E. Bent this telegram: "Come immediately; must have papers connected with Ebner deal. Answer." On the 18th I had received no answer and sent the following telegram: "George E. Bent, 60 Broadway, New York. Wire me whether option and other papers requested are forwarded"; and in answer to that, on the 22d, I have this telegram from Mr. Middleton, who is in the office there: "Bent away; am mailing to-day all Ebner papers requested." I have sent for these papers and if they come before the argument closes I will introduce them. We have no other copies.

Objection overruled. Defendant allowed an exception.

A. I gave Mr. Underwood an option on 60,930 shares of the Ebner Gold Mining Co. stock belonging to me.

Q. Is that the only contract you have had with anyone connected with your stock? A. Yes.

Q. That is any outstanding contract?

A. That is the only contract.

Q. Were these shares of stock of yours put in escrow? A. Yes, sir. [1186]

Q. And never been delivered yet, have they?

A. No, sir.

Q. There has been no transfer on the company books of this matter at all? A. No, sir.

Q. Of any shares? A. No.

Q. I believe, as you have testified to Mr. Shackelford, you have never been paid for your shares of stock? A. Not in full.

(Testimony of William M. Ebner.)

Q. You heard the testimony of several of the witnesses here who were purporting to testify to what they called a custom about crossing an unpatented property with water. Do you know whether or not any such custom has been prevailing here as a general custom since you have been here, in the mining business? A. No, sir.

Q. What do you mean—it is not?

A. I mean by that, that I don't know of a single instance where one party who desired to cross the property of another did it without the consent of the party owning the property—I don't know of a single one. I know of some instances where they went so far as to get into litigation, I think, but as a rule most all of them compromised in some way. (By Mr. HELLENTHAL.)

Q. You don't know of a single instance where ditches have been built across the mining claims of others?

A. Oh, yes, I know where they have been.

Q. Do you know of any instance where they have been built without asking anybody's consent about it? A. I don't know of one—not any.

Q. You don't know about the building of the Treadwell ditches [1187] or any of those ditches?

A. I don't know anything about those.

Q. Whose consent did you ask to build the ditch across the Royal that you did the assessment work with in the Borean pit?

A. That ditch was built by the early placer miners and the dam was built by the placer miners, long before I came here.

(Testimony of William M. Ebner.)

Q. Water was used in the Borean pit?

A. When I made the locations there I rebuilt the dam and rebuilt the ditch, where it had washed out, and used the same ditch and dam that was built there in the beginning.

Q. Whom did the Royal claim belong to at the time you did all this? There is a dam on the Royal, is there not?

A. No, the dam is on the Parish No. 1.

Q. Can you locate that dam on this plat #7?

A. I can do it this way, by following up the continuation of the Lotta southwest side line, following up the Royal side line. The dam is below that side line.

Q. Can you locate the dam of exhibit 7?

A. Not exactly; no.

Q. Approximately?

A. It is just a little distance, a very short distance below that side line.

Q. Can you locate it approximately on the map?

A. I can approximately—providing you have the right map.

Judge WINN.—We object to that—this map has a lot of lines on it that are in dispute.

Objection overruled. Plaintiff allowed an exception.

The WITNESS.—Is this the Lotta side line as Judge Winn claims it?

Q. Yes.

A. You follow right up along here—this is Snow-slide Gulch? [1188]

A. Well, the dam is just below that and the ditch

(Testimony of William M. Ebner.)

comes around this way and follows around the bluff like this and then comes down like that.

Q. Then that is an old ditch the miners built?

A. Yes, sir, an old ditch.

Q. All you did was to merely clean the ditch out?

A. We had to rebuild a good portion of it and the side and some places where it broke through, where it had been taken away.

Q. That is all you did? A. Yes, sir.

Q. When did you build the Ebner ditch—was that built when you came there—the Ebner ditch that runs from the Ebner dam, the main dam, to the Ebner mill—the flume?

A. That was built when I came here.

Q. Across the Humboldt property?

A. Yes, sir.

Q. Did you ever find in the title papers of the Ebner property that you had any right of way or privilege from the Humboldt Company to cross that ground?

A. Well, I suppose there was a privilege.

Q. Did you find any such thing as that?

A. I found a declaration filed by Mr. Coulter for a right of way just where the flume is now.

Q. Did you ever find any right of way from the Humboldt Company to your company, to Coulter or anybody else, or leave to build the flume under that declaration? A. Outside of that; no, sir.

Q. It nevertheless crossed the property of the Humboldt Company?

A. It does; a small portion of it.

Q. That is the same property that was patented at

(Testimony of William M. Ebner.)

the time Garside made the survey for patent of the Lotta and those claims? [1189]

A. The Humboldt was patented long before that—several years.

Q. Do you know where the California & Nevada Copper Company are now attempting to build a flume, where they are taking out the water now and conducting it down to the Cape Horn?

A. I know where they have a flume built, a flume-line.

Q. That also crosses the Humboldt property?

A. Yes, sir.

Q. It also crosses the Dora group? A. Yes, sir.

Q. Does any one of these properties belong to the California & Nevada Company, except the Humboldt which was acquired after the ditch was built?

A. I don't know when it was acquired but I understand they own it.

Q. But they didn't own it at the time that this ditch was built, at the time that this flume was projected—you know that? A. No, I don't know it.

Q. You are also the president of the Dora Gold Mining Company? A. Yes, sir.

Q. Did you ever give Mr. Mackey or Mr. Bent or anybody connected with the California & Nevada Copper Company any consent to cross the Dora group?

A. Yes, sir; gave them a verbal consent.

Q. When? A. Last summer.

Q. Who was present?

A. I gave it to Mr. Bent when I saw him in Seattle.

(Testimony of William M. Ebner.)

—I don't know who was present—a verbal consent.

Q. When was that? A. Some time in July.

Q. You are sure of that? A. Yes, I know it.

Q. There was nobody present but you and Bent?

[1190] A. That is all, I think.

Q. Was that reduced to writing at any time?

A. No, sir.

Q. Never been reduced to writing? A. No.

Q. Did Mr. Bent ask you for a consent?

A. I think he did—that is, he had told me about this projected flume to cross the Dora.

Q. Where were you when this thing was discussed with Mr. Bent? A. At the Lincoln Hotel, Seattle.

Q. In what room?

A. I don't remember the number of the room.

Q. And don't know who was present? A. No.

Q. Mr. Bent is not here at the present time?

A. No.

Q. You don't know where he is? A. I do not.

Q. You know, however, that no written consent, written right of way, was ever given to the California & Nevada Copper Co. to construct that flume?

A. No.

Q. You know that? A. Yes, sir.

Q. Were you in Seattle in July of last year?

A. Yes, sir.

Q. What other instances do you know of where anybody ever gave or asked for consent to build a ditch across anybody's mining ground, unpatented, —a mining ditch to be used in connection with mining operations?

(Testimony of William M. Ebner.)

A. I don't know that there is any difference between unpatented and patented.

Q. Where they either asked or received permission to build a ditch across unpatented mining ground where the water was used for mining purposes? I am not asking about patented ground.

A. I don't remember of any particular case.
[1191]

Q. You don't remember any particular case?

A. No, the Last Chance went on there without any permission and built their grade and then came and asked permission. That was on the Lotta—also on the Cape Horn claim.

Q. Whom does the Cape Horn claim belong to?

A. It belongs to myself and a man named Wilson, and at that time I don't remember whether Mr. Revard and Mr. Zimmerly had any interest or not. I think they did.

Q. Did Wilson consent? A. No, sir.

Q. He was still a part owner in the Cape Horn?

A. He was.

Q. Is he still? A. No.

Q. When did Wilson cease to be an owner in the Cape Horn? A. I think in 1902.

Q. Did he convey his title to you? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. The Hile people or Jualpa people built a flume across the Lotta and partly on the Cape Horn and then came to you and asked consent and paid you \$10,000—ain't that true?

A. No, they didn't pay \$10,000—\$8,000.

(Testimony of William M. Ebner.)

Q. How much of that was to cross the Lotta?

A. Their dam was on the Lotta and I don't remember the distance they crossed the Lotta. They dug a tunnel across the Lotta—they dug a portion of the tunnel for the intake at the dam.

Q. Now, those Hile people were drygoods clerks, were they not—you know that? A. No.

Q. How long had the Hile people been in this country when you had that deal with them?

A. Mr. Will Hile had been here for several years—had been mining around the country—at least three years. He had a property [1192] here that was paying dividends, that they were paying dividends on. I don't know where it was.

Q. Will Hile was the man you dealt with?

A. No; the gentlemen with whom we finally dealt with was the full board of directors. I think they were here, a man named Ritter, their attorney, and myself and Wilson. Ritter was from Philadelphia.

Q. And the board of directors was from Philadelphia?

A. I think most of them were; yes, sir.

Q. They were up here to look over their property and you finally made a settlement with them to pay you \$8,000 to take that water across there and start their workings? A. Yes, sir.

Q. How much of that did you credit to the Cape Horn and how much to the Ebner?

A. The Ebner Gold Mining Company got a credit of \$5,000 and the Cape Horn interest \$3,000.

Q. The Cape Horn belonged to you personally?

(Testimony of William M. Ebner.)

A. Myself and copartners.

Q. And the balance to the company?

A. And the Lotta to the Ebner Gold Mining Company.

Q. There wasn't any suit about it, any litigation?

A. No, there wasn't any suit.

Q. You never sued them and they never sued you?

A. No.

Q. How long had you been in this country at that time?

A. I had been here several years—six or seven years.

Q. Where did you come from to this country?

A. I came from Wisconsin, from Milwaukee.

Q. What was your business there?

A. I was in the mercantile business. [1193]

• Q. You had been here six or seven years and Hile had been here about three years? A. Yes, sir.

Q. You became interested in the Ebner Gold Mining Co. and Hile was connected with the Jualpa placer property? A. Yes, sir.

Q. Could this property be worked, the Jualpa property, unless the water was taken approximately at that point—where this water was taken out?

A. Yes, sir.

Objected to as immaterial. Sustained.

Q. Is it not a fact that these Hiles were up here with their board of directors—it was delaying their work and they were willing to concede almost anything you might claim, at the time you got that money?

(Testimony of William M. Ebner.)

A. No; they had the flume built We agreed on a partial settlement and I let them go on, with the understanding that when their board of directors came here, we would thrash the matter out, make a full settlement and agree upon terms, an absolute amount.

Q. The water was taken off of the patented Lotta, however? A. Yes, sir.

Q. Is it not a fact that Mr. Donohue was your attorney at that time? A. I don't remember.

Q. Anyhow, that is the only case you know of where the mining ditch was run across unpatented mining ground where there was any dispute about it? A. I don't remember any other now.

Q. That is all you know about the custom of miners in that connection—you don't know anything about the Treadwell ditches [1194] or the Berner's Bay ditches or any of those ditches?

A. I don't know anything about the Treadwell ditches or anything about any ditches except those in the vicinity of Juneau and Silver Bow Basin—and my own ditches.

Q. You don't know anything about the custom outside of that?

A. I knew the custom before civil law was established, before the statute was extended in 1884. I knew that then the miners' rules and regulations governed, but after that, my understanding has always been, after the courts were established here and the statute extended, that those were absolute.

Q. Your understanding was that prior to 1884 you

(Testimony of William M. Ebner.)

could cross the ground with a ditch but you couldn't do it unless—

A. No, not that way. Before 1884, before civil law was established, you could cross but would be governed by those miners' rules.

Q. Under the miners' rules?

A. Yes, whatever they were.

Q. But since 1884 the right is taken away by federal statute?

A. That is my understanding—there is a statute for that.

Q. You don't know anything further about it, except what you have testified to? A. No.

Q. Those are the only ditches you know of?

A. That is all I can remember now.

Witness excused. [1195]

**[Testimony of Angus Mackey, for Plaintiff
(Recalled in Rebuttal).]**

ANGUS MACKEY, recalled in rebuttal.

(By Judge WINN.)

Judge WINN.—At this time I desire to renew my offer of the contract that was executed by the Alaska-Juneau Gold Mining Company with the Jualpa Company, promising and agreeing to convey certain portions of the Idaho and Colorado claims that lie in the creek-bed above the Jualapa Company dam.

Objected to. Objection sustained. Plaintiff excepts.

Q. I will ask you if you heard Mr. Ebner's testimony about going on this ground on the 6th day of June, the day the photographs were taken by Lloyd

(Testimony of Angus Mackey.)

Winter—did you go up on that trip? A. I did.

Q. How long have you been engaged in construction, etc., connected with mines and mining operations? A. Between 25 and 30 years.

Q. At what points?

A. In construction of mills, etc., in Montana, Colorado, Idaho, New Mexico.

Q. I believe you testified to having furnished the plans, etc., and assisted in the construction of the Treadwell mills?

A. I was at the Treadwell mills; yes.

Q. Now, in your various experiences around mining claims and building structures of this kind, have you had some occasion to examine into the formation and bedrock and things of that kind? A. I have.

Q. You don't pretend to be an expert at that?

A. Not at all.

Q. Were you on this property when Lloyd Winter took those photographs that were offered in evidence this morning? A. On the 6th? Yes.

Q. I wish you would tell the Court just what Mr. Ebner did up [1196] there that day and tell what you struck there in the way of bedrock, etc.?

A. First, we had Mr. Winter take a photograph of a pile of ore that was down on the bank, that is right near the steep bank that leads down to Gold Creek.

Q. That is the picture that was offered in evidence this morning that shows quartz lying on the ground?

A. Yes, it shows quartz lying on the ground.

Q. Then, you were there when that was taken?

(Testimony of Angus Mackey.)

A. Yes.

Q. I will ask you if you saw anything in the way of any open cut or any work that had been done there.

A. Yes, there was an open cut there—there had not been work done on it lately.

Q. I will ask you if you saw those pieces of quartz that were lying on the side of this open cut when you were there? A. I did.

Q. Did you examine this open cut to see whether there was any similar formation in the cut to those rocks that were lying on the side of it there?

A. We could see the quartz there.

Q. How did it look compared with the quartz that was on the side, thrown up in those pieces?

A. About the same quartz—the same kind.

Q. What else did you do there that day?

A. And we went over to that pit or cut—Borean, I believe, they call it—and Mr. Winter took a photograph of a reef that is there—that was one of the photographs offered in evidence.

Q. Last Sunday were you up there?

A. Yes, sir.

Q. Did you do any other uncovering of the ground there or removing [1197] of any earth?

A. Yes; in company with Mr. Ebner I took up those men and we uncovered bedrock in about three places.

Q. Where was this bedrock that you uncovered with respect to this open cut that Lloyd Winter took a picture of, at the side of which there was some

(Testimony of Angus Mackey.)

quartz in the Borean pit? Describe it relatively.

A. The first cut we made to strike bedrock was about 140 feet from where the bank pitches off steep down to the creek, and we uncovered bedrock there for several feet and we went further up and uncovered another place there.

Q. Which way did you go up with respect to the Borean pit?

A. Probably about the center of the pit—the center line about.

Q. Did you go from this place near the brow of the hill that leads down to the creek? You say you made an uncovering there. Did you make any other uncovering before you got to the Borean pit?

A. Yes; that was in the pit, in the center of the pit—it *really* not the pit; it is a cut.

Q. What did you do there?

A. We uncovered bedrock there for some twenty-odd feet.

Q. Did you go to that place in the Borean pit, what we claim—where this outcropping that we claim is of quartz and what the other side claim is a boulder is? A. Yes, sir.

Q. What did you do there, if anything?

A. Well, we sank a small pit there and we showed bedrock there to satisfy ourselves that the rock was in place, that the reef was in place.

Q. Were you up there with Mr. Ebner this morning? [1198] A. Yes, sir.

Q. Describe what you did there in this Borean pit this morning.

(Testimony of Angus Mackey.)

A. We went up there and saw where somebody had sunk a pit down there in front of the bluff—the bluff stands up in front of it. The photograph was taken where it shows these two fractures or quartz veins—they are quartz veins.

Q. I hand you Plaintiff's Exhibit "PP." Can you describe approximately on that picture where you found this pit dug there?

A. Yes, the pit was on this side. Looking at the bottom of this corner here it showed loose ground around there, that extended that long (indicating).

Q. Was this pit that had been dug there dug to where the rock projected out into the pit somewhat or how about that?

A. Yes, there was another piece of rock coming up through—I think it was rock in place.

Q. Did you ascertain from the surroundings whether there had been any blasts fired or not?

A. No, we couldn't see.

Q. What did you do to ascertain whether or not that vein continued on down into the ground or not?

A. Instead of following it the way they done, we dug along the trend of the country there—we dug down to where this solid formation was.

Q. How far about was that from the pit that Stewart examined?

A. It just extended the other way with the trend.

Q. How far from that did you find rock in place from the pit?

A. It was only a few inches where we dug down.

(By Mr. SHACKLEFORD.) [1199]

Q. In toward the face of that boulder and at the

(Testimony of Angus Mackey.)

end of the cut, there is a hole sunk, is there not?

A. No, it is on the front here; it shows on this photograph like this corner—it comes around the corner this way.

Q. It wouldn't show in this picture, because the picture don't take enough of the rock?

A. No; it is underneath the lower part of "PP"—it shows almost identical with those quartz seams on the trend.

Q. Did you go down into that cut and the pit underneath there where the work had been done?

A. Yes, we had men working there.

Q. As you cut into that, I understand you displaced some rock and dirt and found quartz in place in underneath the boulder.

A. I didn't say quartz in place.

Q. Rock in place? A. Yes, rock in place.

Q. Was it on your left hand as you stand facing in that cut or on your right hand?

A. On your left hand.

Q. I will now show you this Exhibit 68 and ask you to take your pencil and mark on that picture the rock which you found in place.

Judge WINN.—We object to this. The photograph has not been identified.

Mr. SHACKLEFORD.—I will ask permission to call Mr. Pond.

Witness withdrawn.

[Testimony of Percy Pond, for Plaintiff (Recalled in Rebuttal).]

PERCY POND, recalled.

(By Mr. SHACKLEFORD.)

Q. I hand you an exhibit marked No. 68 and ask you who took that? A. I made the photograph.

Q. When was it taken? A. To-day.

Q. Is it in the Borean pit? [1200]

A. I don't know what the name is.

Q. You identified the picture, exhibit 9, the other day. Is that the same rock? A. Yes.

Q. The rock marked "boulder" in that picture?

A. Yes, sir.

Q. Does that correctly represent the rock taken this morning? A. It does.

Mr. SHACKLEFORD.—We offer it in evidence.

Objected to. Overruled. Plaintiff excepts.

It is marked 68 and admitted in evidence.

Q. I now hand you another picture, marked 69, and ask you if that was taken at the same time and under similar circumstances.

A. It was taken a short time before the other one was.

Q. On the same trip? A. Yes, sir.

Q. Does it correctly represent the conditions exposed there? A. It does.

It is admitted as Exhibit 69.

Judge WINN.—Before that is admitted, I want to question the witness.

(By Judge WINN.)

Q. Who went up there with you this morning?

(Testimony of Percy Pond.)

A. Mr. Stewart.

Q. Did he do any more work this morning?

A. He did no more work—he just directed me where to take the photographs.

Q. What time did you get up there?

A. About half-past ten or eleven; somewhere along there.

Q. Just you and he were alone? A. Yes.

Q. He is standing in the picture?

A. In one of those pictures he appears—the first one I identified. [1201]

Q. He didn't do any work of any kind up there?

A. He did not.

Q. He didn't have anybody do any work?

A. No.

Q. You went there this morning about ten o'clock and took it just as you found it? A. I did.

Judge WINN.—We urge the same objection to Exhibit 69. Objection overruled. Plaintiff excepts. (By Mr. SHACKLEFORD.)

Q. I hand you exhibits 70 and 71 and ask you to state whether they were taken under similar circumstances? A. I took them this morning.

Q. They are both correct representations?

A. Yes, sir.

Offered in evidence. Same objection.

By the COURT.—Were they taken at the same place?

A. At different points, in the same immediate vicinity.

Q. (By Mr. SHACKLEFORD.)—All directed at the same rock? A. Yes, sir.

(Testimony of Percy Pond.)

(By Judge WINN.)

Q. Did you take these all in the Borean pit?

A. I don't know it by that name. It was pointed out to me—the same place I have been photographing on other occasions, the bluff by the side of the open cut there, referred to on the former occasion.

Judge WINN.—We object to these pictures for the same reason as the others, that I have been under the impression that they were to collect all their evidence up to last night. This won't give us the time to rebut anything that may appear from these pictures.

By the COURT.—They reserved the right to introduce these photographs. Objection overruled; 70 and 71 admitted. [1202]

[Testimony of R. D. Stewart, for Plaintiff (Recalled in Rebuttal).]

Mr. STEWART, recalled.

(By Mr. SHACKLEFORD.)

Q. I will hand you these four exhibits marked from 68 to 71, inclusive, and ask you to take them and look at the numbers on the back and explain what they represent?

Judge WINN.—We make the same objection, and also that it is not the best evidence.

Objection overruled. Plaintiff excepts.

A. Sixty-eight shows the bottom of the boulder referred to as the large boulder—I have my hand underneath. That represents the bottom of the boulder and I am standing in the bottom of a little shaft right back of the head—shows where stulls

(Testimony of R. D. Stewart.)

were put underneath there to hold the mass up. My hand was placed in that position in order to show that the under surface of the boulder slopes back up hill; that was the purpose of that picture. Sixty-nine is the same cut, and according to the marking—the marking is upside down; the bottom of the handle of the shovel is at the bottom of the little shaft. He has marked the wrong end for the bottom. The spade portion of the shovel should be up in this photograph and it shows the cross-section underneath the boulder in the washed material, where it is exposed by means of the shaft. No. 70 is a general view of the boulder itself—the rim of the Borean pit, the hole which is dug and the shovel in the same position as in the other photograph—that is, the handle of the shovel was down at the bottom of the little shaft and the spade part of the shovel is above. Number 71 was taken by me to show the last point up the creek approximately, the last point up the creek where bedrock appears in the Borean pit. The bedrock is shown in the base where the rivulet runs, where the spade of the [1203] shovel is; thus looking right up the pit, this bedrock here where the little strata is shown and the stream shows—everything from along the slide where I have the pencil, and the large boulders in the left background.

Witness excused.

[**Testimony of Angus Mackey, for Plaintiff
(Recalled in Rebuttal—Cross-examination).**]

Mr. MACKEY.—Continuation of the cross-examination.

(By Mr. SHACKLEFORD.)

Q. Take your pencil and mark on that exhibit 68 the rock you claim you found as part of the bedrock.

A. This shows the rock, the part of that reef overhanging here. Here it is that Mr. Stewart or somebody had excavated, where he is standing; it shows the stulls that were put up there for Mr. Stewart; it don't show any cutting away, as I can see. Down through here, the trend of the formation right here, is where we dug out instead of coming under the bluff here. This is simply an overhanging part of that reef.

Q. What time did you dig out?

A. This morning, between half-past 5 and 7.

Q. Show me where you dug out.

A. It is running in this other way. This shows the front.

Q. That picture don't show where you dug out?

A. Not exactly. It would show running this other way, running back with the trend of the formation.

Q. Mark on that picture where you exposed bedrock, where it would be.

A. It don't show clearly where that would be.

Q. Indicate with an arrow or point in some way.

A. In a general way I will.

Q. Indicate with an arrow where it would be that you have exposed [1204] rock in place underneath there.

(Testimony of Angus Mackey.)

A. That photograph wouldn't show it.

Q. Would it be below or above the level of the photograph?

A. It is there—that is approximate, you know.

Q. Part of this same boulder that is overhead?

A. Part of this same reef—this reef overhangs here and where we saw the solid formation was in here.

Q. Approximately where that arrow is?

A. Approximately; yes.

Q. I hand you exhibit 69. Indicate there where there is any rock in place underneath the overhanging rock.

A. The whole reef here is in place, if that is what you mean.

Q. The whole reef is in place? A. Yes.

Q. That is not drift material in here?

A. That shows an opening in here.

Q. Where is the place you uncovered this morning by going 4 to 6 inches?

A. It don't show there in that picture.

Q. It would not be on the front—it is not shown looking exactly to the front?

A. This would show it to the left—down the hillside.

Q. I want you to describe to the Court how that vein comes up and meets the boulder—did you trace it up to the overhanging ledge by uncovering it. The overhanging rock under which this excavation has been made—did you trace the rock you claim to have found in place up to that body of rock?

(Testimony of Angus Mackey.)

A. Why, yes—the contact was made right against this diorite here.

Q. What is the nature of that contact?

A. It is a yellowish stuff—this is part of it. We took a sample of it. (Referring to “SS.”) [1205]

Q. You want the Court to understand that this is rock in place?

A. I want the Court to understand that is rock in place.

Q. What is that—exhibit “WW”?

A. That is what I would call the diorite on this reef.

Q. This is a part of the contact? A. Yes, sir.

Q. Well, now, by using the word “contact” you don’t want the Court to understand that you discovered the same rock but you discovered the rock which you conceived ought to lie next to the bedrock that is uncovered and overhanging in the drift there?

A. That’s it—it lies right against it.

Q. So far as following the roots of that rock down, you didn’t do anything, but you simply found what you thought to be the contact?

A. We satisfied ourselves it was in place and we could easily see that as soon as it was uncovered—you could see it was in place.

Q. As soon as that brown stuff is uncovered?

A. As soon as you have done sufficient work to show the whole formation there—where you could see it was no boulder at all.

Q. This brown rock “SS” was not broken off of

(Testimony of Angus Mackey.)

what we claim to be the boulder, was it?

A. It was lying next to the hard diorite.

Q. It was not broken off of it—it is a contact, as you claim, and not broken off of it.

A. I claim it is a contact; yes.

Q. It was not physically disengaged—this rock and what we claim to be the boulder were not cemented together?

A. No; it is separated, so it would come apart from the other. [1206]

Q. How large a piece of rock was that broken off of?

A. It was in place down there. We just broke part of it off.

Q. How large a piece was it you broke this off of?

A. I couldn't say. We just took that where it showed solid at the bottom.

Q. Where it stuck up?

A. No; it was solid down at the foot of this, on the left-hand side.

Q. How much of it did it show to convince you it was solid? A. I couldn't state just exactly.

Q. But you don't want the Court to understand that you have cut through the debris under that rock to a lower depth than the depth of that tunnel and brought here any sample of the same rock? I mean the tunnel which has been made here for the purpose of exposing that cavity under the rock.

A. The pit and overhanging rock under it?

Q. Have you samples of the roots of that rock that

(Testimony of Angus Mackey.)

has been excavated under there? I mean the downward extension that wasn't exposed by Stewart's excavations?

A. This was taken out after we had opened up along the trend.

Q. Which was taken out—the brown rock?

A. Yes.

Q. I want you to tell the Court whether you have found and brought here any specimen of rock that was not uncovered by Mr. Stewart's investigation of the same character as the rock under which he has made the excavation.

A. This here was not uncovered by Stewart, I don't think.

Q. You don't claim that is a piece of the rock which he is excavating under—you simply claim it is a contact? A. Yes.

Q. And that it was not actually, physically, broken off of the [1207] ledge which is exposed and under which he has been excavating?

A. It is right up against it on the other side. It would be in a square like, coming down here, and he came down this side.

Q. Where else did you find that contact?

A. That is the place we found it.

Q. Anywhere else?

A. No; we didn't look for it anywhere else.

Q. You say it is a contact without establishing it except at one place?

A. It was in that place, solid.

(Testimony of Angus Mackey.)

Q. How big a rock was this taken off of, as far as you could see?

A. It was several inches. I couldn't state how many.

Q. Which way does that rock excavate?

A. It hangs over straight, like that.

Q. It hangs down toward you as you stand on the outside?

A. It kinder overhangs—it just overhangs.

Q. The inclination is a little—

A. It might be a little down.

Q. But it is not one of those excavations that expose the rock as flaring up, in an upward angle?

A. It kind of hangs over like that—I mean where they have the stulls.

Q. I am talking about the stratification. You know as a matter of fact that the position of white quartz in diorite all the way up there is not in any set pitch?

A. Well, it varies, what I have seen of it up there.

Q. What you call the stratification of the ore in that country is the stratification of the main rock and not of the [1208] quartz seams, is it not?

A. They both seem to run about the same way, as far as I could see.

Q. You know, as a matter of fact, that the quartz seams cross each other and separate themselves into the various crevices of the main formation in every direction? A. Not that I have seen.

Q. And separate out in different directions?

A. They may cross but not any I have opened up.

(Testimony of Angus Mackey.)

Q. You know the deposit up there is distinguished by the fact that quartz veins have filled in the fractures in various directions in the main body of the rock, don't you?

A. Well, I am not prepared to state.

Q. (By Judge WINN.) You have noticed they seem to have the same sort of dip or run somewhat in the same direction, the larger stringers?

A. Yes, sir.

Q. What is the size of this stringer in this boulder—what you call a reef and what we call a boulder?

A. From two to six inches.

Q. Just one seam in there?

A. No, there are two.

Q. And they are not parallel, are they?

A. Yes, they appear nearly parallel—they are pretty nearly parallel.

Q. Here is the quartz seam beginning at "A"—I am referring to "PP."

A. Yes; it does not show it very plain—the trend is over here, I think. It doesn't show very plain.

Q. There are not any quartz seams in that rock that run at right angles or any different direction from that?

A. Not as I have seen. There might be, altho I didn't see it. [1209]

Q. They are about how wide?

A. From two to six inches, I should say. They vary in width.

Q. You know as a matter of geology that the finer quartz seams in that whole country are deposited,

(Testimony of Angus Mackey.)

not by any set geological action but by the circulation of waters in the fracturings, however they may be termed? A. That is what I understand.

Witness excused.

[Testimony of Wm. M. Ebner, for Plaintiff (Recalled in Rebuttal).]

WM. M. EBNER, recalled.

(By Judge WINN.)

Q. Here is a series of new pictures that have just been offered in evidence. I hand you No. 69. If you can tell from that photograph as to where approximately you found this formation when you extended down alongside the rock just a few inches from the pit Stewart sank, I wish you would point it out on that photograph.

A. It is not on here, no, sir; and another thing, the work has been changed up there since we have been up there this morning—they only had one stull and here they have two propped in there.

Q. You say there was only one prop under there when you were up there this morning?

A. Yes, sir.

Q. There was another one put in between the time this picture was taken and when you were up there this morning? A. Yes, sir.

Q. Now, I will ask you from an examination of that rock up there whether it looked like there was any immediate danger of it dropping off or slipping off or sliding off?

A. No. If you were going to work there a long time, as a precautionary [1210] measure on the

(Testimony of William M. Ebner.)

very corner of that rock you might put a stull under but it extends right down solid.

Q. Those quartz seams, would they have a tendency to hold it together or would they generally break if you did any shooting around there?

A. It would fracture them.

Q. Is there anything else in that photograph that shows any particular place that you made any examination of?

A. No; this photograph shows just one particular little space enlarged—just one little spot there.

Q. I will hand you the one with the man and spade—No. 68. Is there any change in the conditions in that photograph?

A. Yes; there has been some excavating done. There is a short timber put in here that was not there this morning, and they have evidently picked out some soft rock here, some soft seams, the softer part there, to show that it is loose, when, in fact, this being next to the footwall and overhanging, there is some soft seams in this rock in place, and where this gentleman has his hand, that has been picked out for the purpose of showing—to show there is a crack there.

Q. Take it down along the man's feet, down towards the ground, and explain to the Court if that contains anything you testified concerning?

A. No; that is not down low enough—that doesn't show it low enough there.

Q. What is that down about the man's foot—is that the continuation of that same formation?

A. Down below, further down, evidently there is

(Testimony of William M. Ebner.)

where the pit was that Mr. Stewart testified about yesterday and that pit is not visible over here on this picture. [1211]

Q. Here is a picture with the prop knocked out—No. 70?

A. That is about as we found it this morning—just about.

Q. Did you see that second prop there this morning that is lying on the ground?

A. No, sir; I saw it lying there, I think, but it was not put in place.

Q. Is there anything in that photograph that you can indicate as to the point that you did any work this morning to follow down this formation?

A. The pit is visible but not the depth of it—you can't see down to the bottom.

Q. I will hand you No. 68 and ask you if that rock commencing over the head of the man and continuing down to his feet, if you know sufficient about the rock there to say whether that is a continuation of the same formation and the same rock?

A. Yes, that is the same rock in place and it shows more particularly right by the man's feet there—that is all the same rock—there is a softer streak in there for a little ways where they dug it up.

Q. This No. 71—is there anything you want to point out on that?

A. That is a view taken from the creek, close to the creek, up to the Borean pit, and shows in the distance this same reef on the left—it is along in here. Here is about where we started in to bare the bed-

(Testimony of William M. Ebner.)

rock; that is where the excavations were made last Sunday, and then we followed it on up, up to the rock in place, or the reef in place.

Q. How is the inclination of that rock as it projects out into the pit—at about what angle does it go down or up into the hill? Can you tell? [1212]

A. Yes; here is the pit along this way. This rock is on the north side of the pit and it dips to the northeast about 50, and it is under this that this excavation was made, and it is this overhanging part that these pictures are taken from.

(By Mr. SHACKLEFORD.)

Q. I understand you want the Court to understand that the rock referred to is an overhanging ledge, not declining, but dipping in an upward direction as you look at it from the pit.

A. I mean to say that that is a reef or a diorite belt, and it being harder than the footwall or greenstone has been left there and shows the west side line exactly and shows that it dips with the balance of the formation to the northeast.

Q. Away from the pit?

A. Not away from the pit, because the pit is at right angles with this and this rock in place is on the north side of it. The pit is on the south but the cross-section—

Q. It dips to the northeast?

A. It dips to the northeast.

Q. Now, in this picture you say that Stewart is not standing on the bottom or the lowest point in the excavation?

(Testimony of William M. Ebner.)

A. Not in the lowest point that was excavated this morning; no.

Q. You said something about finding a footwall—that does show that?

A. It would by following that right down there.

Q. And I also understand you to say this soft material here is a decomposition of the diorite rock?

A. Diorite itself.

Q. Decomposed?

A. In certain places along the under side.

Q. Along the contact? [1213]

A. On the contact, where the contact was.

Q. What is that? Referring to "SS."

A. That is a part of the diorite next to the contact with the greenstone, that is what that is. The greenstone comes right along on the west side; this is the contact—it is a contact between the two dissimilar rocks, this being a greenstone and this being a diorite; this is a part of the diorite and is soft and that was picked out with a pick.

Q. Broken off of this reef? A. Yes.

Q. Part of the same rock that we have had samples of here that is under discussion, whether it is a boulder or reef?

A. Yes, sir. And beyond those a few inches we have a few pieces that are hard, not being decomposed.

Q. You broke those off the same rock that is in controversy? A. Yes, sir.

Q. So Mr. Mackey is mistaken in saying it was not broken off?

(Testimony of William M. Ebner.)

A. I don't know whether he is mistaken.

Q. Who did the breaking?

A. Graham handled the pick.

Q. Where were you standing when it was broken?

A. I was standing right close by.

Q. In the pit?

A. No, not in the pit; at the edge of the pit.

Q. The pit is lower in level than the cut underneath? A. Yes, sir.

Q. You saw him break it off this same rock that is in controversy? A. Yes, sir, I did.

Mr. SHACKLEFORD.—We now offer the exhibits in evidence. They are admitted, subject to objection of plaintiff and exception. [1214]

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, the consent you gave Mr. George Bent to build a flume was across the Dora group—across the Forrest and the other patented claims of the Dora group, was it not?

A. Yes, sir—the Forrest is in the Dora group.
(By Judge WINN.)

Q. You gave him consent to cut across, to go across, the unpatented claims too, did you not?

A. The Cape Horn?

Q. Yes. A. Yes.

Q. As well as the patented? A. Yes.

(By Mr. HELLENTHAL.)

Q. What unpatented claims have the Dora group there?

A. The Dora group has no unpatented claims.

Q. You didn't give him consent to go across un-

(Testimony of William M. Ebner.)

patented claims of the Dora group then?

A. The Cape Horn and Eureka claims are also in the option.

Q. They are part of the option that George Bent has from you? A. Yes.

Q. You didn't give him any consent to cross those claims? A. I certainly did.

Q. He has an option on those?

A. That doesn't make any difference. I gave it to him just the same.

Q. You gave him consent to build the mill there, too? A. Yes, I did.

Q. All at the same time?

A. All at the same time.

Q. He asked you for consent to build a mill and you told him he could build a mill and build a flume?

A. Yes, sir. [1215]

Witness excused.

Judge WINN.—We now offer this photograph from Bulletin 287, which I identified yesterday.

(It is admitted as "NN.")

Judge WINN.—We offer the rule found on page 14 of the rules of the Manual of Instruction for Surveyors of Land, etc., 1895, for the purpose of showing that calls are made to those natural objects and are so treated by the surveyors for topographical purposes, so they can be put on the map. This applies to Alaska. It is Numbered 24, directions to surveyors, etc. As I say, it applies to Alaska as well as anywhere else.

By the COURT.—It will be admitted. The Court

is supposed to take judicial notice of those things— if there is any change, either side would be permitted to call attention to it at any stage of the trial of this case or on appeal, because the Court is supposed to take judicial notice of any changes either by Congress or the heads of departments.

Judge WINN.—If there are any exhibits I have heretofore identified and not offered, I now offer them so as to cover that phase of the case—those that have not been rejected.

Mr. SHACKLEFORD.—Objected to as incompetent, irrelevant and immaterial—so that we may urge any objection we may desire to each exhibit.

By the COURT.—It being understood that this order does not apply to exhibits which have already been rejected, the order will be made and objection overruled. Defendant excepts. [1216]

[Testimony of F. J. Wettrick, for Plaintiff (Recalled in Rebuttal).]

F. J. WETTRICK, recalled.

(By Judge WINN.)

Q. I call your attention to Plaintiff's Exhibit "N" in this case and ask you as to what point on this exhibit the large dam of the Jualpa Company is located. Mark it approximately.

A. It is marked already on the plat; it is marked with a black X on the westerly side of Gold Creek.

Q. I mean the big dam of the Jualpa Company in Gold Creek, not the little dam on the Lotta claim which leads off of the high line flume? Mark it by

(Testimony of F. J. Wettrick.)

some letter that does not already appear on the map.
(Witness does so.)

Q. How far approximately is it from that dam up to the Idaho or Colorado claim as platted on this exhibit? A. To which corner of the Colorado?

Q. Going up the creek, going directly up the creek, approximately how far is it before you reach any part of the Colorado or Idaho claim? I mean to include in that any part that might have been in conflict between the Jualpa Company and the defendant company—up the creek.

A. Approximately 400 feet—if I had a scale I could give it to you closer.

Q. Here is a scale.

A. It is approximately 400 feet—it follows that description I checked over with this map.

Q. How far is it up to the pieces or portions of the Colorado and Idaho which is included in two triangular pieces with some considerable coloring made by cross lines with black ink?

A. That is the portion I had reference to up the creek where it strikes that—that is the 4-3 of Survey 142.

Q. How far is it up the creek to the upper side line, to the [1217] further portion of that part I have described to you, from the big dam?

A. It is approximately 200 feet further; altogether approximately 600 feet.

Judge WINN.—Now, I offer in evidence in this case the memorandum agreement between the defendant company and the Jualpa Company, which

(Testimony of F. J. Wettrick.)

contains a description of the property we claim we were working on—for the purpose of showing that Lockhart was mistaken in saying that we went on any of the property of the defendant company, and for the purpose of showing from the recitals, etc., in there that this property had always been claimed by us under the Telegraph placer claims, and we do not offer this for any other purpose except the description, which both parties acknowledged was in conflict—to show that that part was always claimed by us under the Telegram placer location and was at the time they made application for a patent, and not to show any compromise.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff allowed an exception.

Mr. WETTRICK.—I want to correct the first distance I gave. I said 400—it is 300 feet, up to the beginning of the side line of that survey 4-3 of 142. That knocks off the distance just 100 feet.

Witness excused. [1218]

Sur-rebuttal.

[Testimony of R. D. Stewart, for Defendant
(Recalled in Sur-rebuttal).]

Mr. STEWART, recalled.

(By Mr. SHACKLEFORD.)

* * * * * * * *

Q. You heard Mr. Ebner's testimony with reference to the change in conditions as shown in the

(Testimony of R. D. Stewart.)

photographs taken when you took Mr. Pond up there to the boulder this morning?

A. Yes, I heard his testimony.

Q. I will ask you to explain to the Court whether there is any change there and what the condition is with reference to the bottom of the pit and the conditions there as to new or extra stulls, the placing of new or extra stulls under the projecting rock and further as to any change in the position of rock or debris in that vicinity?

Objected to as not proper sur-rebuttal. Overruled. Exception.

A. I will state that the first time I was there this morning was when I went with Mr. Pond to take these photographs, and at that time the ground, as far as I could see, was absolutely the same as it was when I was there yesterday. With reference to the stull I will say I had that put there at one o'clock in the afternoon, and as far as I could see it was absolutely the same as when I left it at that time—yesterday afternoon.

Q. Both stulls? A. Both stulls; yes, sir.

Q. Did you hear Mr. Ebner's statement with reference to your having some change made there where you were holding your hand so as to create a false impression with reference to the rock overhead?

A. I did.

Q. State to the Court about that.

A. Where I had my hand was underneath this and

(Testimony of R. D. Stewart.)

the conditions at that point were absolutely as I left them yesterday afternoon at three o'clock—no change whatever has been made [1219] since that time.

Q. And he also made the statement there had been some change with reference to the debris or soft rock, as he termed it, which appeared at the background of the picture?

A. There is absolutely no difference as far as I could see. I know I didn't disturb it in any way.

Q. There is no difference in any respect as to the condition of the ground as you saw it this morning and what you saw there last night except some excavations that Mr. Ebner claims to have made?

A. I didn't make any change whatever.

(By Judge WINN.)

Q. In one of the photographs I see the prop is down, in the other it is up.

A. No; you may have been looking at the photograph upside down. Mr. Pond has marked that wrong. That should be the top instead of the bottom.

Q. (By the COURT.) Is the date on that?

A. Yes, sir, it is the 8th—taken this morning.

Q. How about that one on the ground?

A. That stull on the ground was in there the day before yesterday, but yesterday afternoon, when I placed those two there, I replaced that small one, it was too low—we obtained some heavier stulls but that stull was lying there yesterday afternoon when

(Testimony of R. D. Stewart.)

I left; there has been no change in the position of that stull.

Q. When did you replace the small stulls and put in large ones?

A. About noon yesterday, after lunch—about one o'clock, perhaps. [1220]

Q. Was that after you got through with the work?

A. No, it was before we got through with the work. I had to put the stulls in there in order to go deeper.

Q. How many stulls did you have there day before yesterday?

A. One—that light one that is lying on the ground now.

Q. And you had two when?

A. Put the two heavy ones in yesterday right after lunch.

Q. There had been a change made there by you of the stulls?

A. Not since this morning, no. I understood Mr. Ebner's testimony that that change took place since he was up there this morning.

Q. There was a change made from smaller ones to larger ones since you have been going up there and you made that change yesterday?

A. Yesterday, at noon.

* * * * *

Witness excused.

Testimony closed. [1221]

[Certificate of Stenographer to Testimony.]

I do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that the Hon. Edward E. Cushman, the Judge before whom the trial of said above-entitled cause was had, was, at the time of the trial of said cause, and is now, the regular presiding judge of the Third Judicial Division; that he, the said Hon. Edward E. Cushman, occupied the bench of the First Judicial Division in the Territory of Alaska during the trial of said above-entitled cause in place of Hon. Thomas R. Lyons, the regular judge of said First Judicial Division; that I reported the trial and proceedings in the above-entitled cause, to wit, *Ebner Gold Mining Company vs. Alaska-Juneau Gold Mining Company*, and that the foregoing is a full, true and correct transcript of all the testimony at the trial of said cause which in any way refers to the Parish No. 2, Canyon and Oregon Lode Claims and the customs of miners in Southeastern Alaska with reference to the acquisition and appropriation of water and water rights, and conveying such water to the place of use.

Dated at Valdez, Alaska, May 15, 1912.

ISAAC HAMBURGER. [1222]

[Additional Evidence.]

*In the District Court for the District of Alaska, First
Division, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-
tion,

Plaintiff,

vs.

**ALASKA-JUNEAU GOLD MINING COM-
PANY**, a Corporation,

Defendant.

**Balance of Evidence, to Complete Bill of Exceptions
and Transcript.**

[Testimony of Lloyd G. Hill, for Plaintiff.]

Additional evidence of LLOYD G. HILL.

(To follow the omission indicated by * * *
on page 104 of original transcript [printed record,
page 250].)

(By Judge WINN.)

Q. Now, when you went on there in 1898, what
part of the running of this line did you do—what
work did you perform in connection with the run-
ning of that line—you were not the surveyor then?

A. No; I assisted in the chaining, building or set-
ting up flags at points along the line, so the transit
man could run by foresight and back sight.

Q. I will ask you if, at that time when you were
aiding George W. Garside in running this lower end
of the Lotta claim, the side line, if you discovered
any stakes or monuments along this boundary line.

(Testimony of Lloyd G. Hill.)

A. Yes, sir.

Q. Just state to the Court and point out on this map or plat that has been marked exhibit "N"—state to the Court what you found and where you found it.

A. We first found stake Number 6—it was marked at that time of the Lotta claim. We found the stake about 192 feet southeasterly, right near the Basin road, on the side line of the Lotta, which was an intersection of the Forrest and Lotta [1224] side lines, and we also found stake Number 5, marked Lotta, United States Survey #87, on the east side of Gold Creek, about 600 feet, I should judge, from the creek.

Q. I will ask you if you saw anything of any cabin or building in, along or near this lower side line of the Lotta claim at that time.

A. Yes, sir, I did. I saw a cabin there, an old cabin almost due north from the corner—that is, about 95 feet away.

Q. What corner?

A. From Corner Number 5 of the Lotta.

Q. Did you hear Mr. Ebner's testimony yesterday? A. I heard some of it.

Q. Did you hear something said about an old cabin near this corner stake? A. Yes, sir.

Q. Now, what distance, approximately, is that old cabin from this stake?

A. That old cabin—I know it exactly, because I measured to it—it is 96 ft.

(Testimony of Lloyd G. Hill.)

Judge WINN.—Let the record show that I refer to the lower side line of the Lotta claim—that I refer to the side line that connects #2 and 5.

Q. Now, I believe you stated that you were up there with Garside in 1898. What did you go up there for, to make a survey of anything?

A. Yes, we went up there to find out where the Lotta side line that is the southwest side line—

Q. You mean the lower side line?

A. The lower side line passed through Gold Creek and crosses the Jualpa dam or the Last Chance dam or flume at that time. [1225]

Q. This is the same George W. Garside that made the survey of the Lotta claim for a patent that you were with? A. Yes, sir, it is the same.

Q. (By the COURT.) You wouldn't be between 2 and 5; that would be between 5 and 6, wouldn't it?

A. Yes, sir, between 5 and 6—this is 5 and that is 6.

Q. What does that 2 up there at the corner of 6 indicate?

A. That is 2 of the Etta claim—when I refer to the lower side line of the Lotta I refer to the one between corners 5 and 6.

Q. You say you were trying to determine the location of this Lower side line of the Lotta to find out what was on that property?

A. To find out how far the Last Chance high line flume entered into the Lotta claim.

(Testimony of Lloyd G. Hill.)

Q. Is the high line flume of the Jualpa Company marked on this map? A. No, sir.

Q. Do you know where the high line flume of the Jualpa Company taps Gold Creek with respect to the Lotta claim? A. Very close, yes, sir.

Q. I wish you would mark on there by the letter "X" in black ink approximately where that Jualpa high line flume taps the water of Gold Creek.

(Witness does so.)

Q. You have marked it with the letter "X" which is near the figures 1888 on the Lotta lode claim?

A. Yes, sir.

Q. This is the same trip that you say you discovered the stakes which you described to the court this morning? A. Yes, at that time. [1226]

Q. It was while you were doing this work?

A. It was while I was doing this work, yes.

Q. When was the next time that you were up there and had anything to do with the boundaries of the Lotta lode claim?

A. Well, the next time was 1899, I think, when the Colorado claim was located and Idaho placer by the Alaska-Juneau Company.

Q. You were up there then? A. Yes, sir.

Q. Did you go over any part of the Lotta lode claim at that time?

A. I at that time made just a quick survey of it as well as I could, and I started from Post #5 of the Lotta and ran along the southwest side line of the Royal claim to set the northeast corner of the Colo-

(Testimony of Lloyd G. Hill.)

rado lode at that time, its location.

Q. What company had you up there to locate the Colorado? A. The Alaska-Juneau Company.

Q. Did you find any stakes of the Lotta at that time? A. I did; yes, sir.

Q. What stakes or corner posts did you find on the Lotta when you were up there in 1899?

A. I found the southeast lode line post of the Lotta and I found the corner #5 and I also saw Corner #6—I had that line for a back sight.

Q. Where was the corner #5 of the Lotta claim then in respect to where it stood when you saw it in 1898? A. The same place, the same stake.

(To follow omission on page 108 of transcript [printed record, page 254] indicated by * * * .)

Q. I will ask you if at the time you made the survey of the Forrest lode claim with Garside, if you and he together [1227] found any of the corners, posts or stakes, etc., of the Lotta that you have been testifying concerning? A. Yes, sir, we did.

Q. Just tell the Court what you and Garside found upon the ground at that time.

A. We found stake #6 of the Lotta; we found stake Number 1 of the Lotta and the northeast corner stake was in the creek, and that we did not find.

Q. What corner was in the creek?

A. The northeast corner of the Lotta—that would be corner #2, and we also found the claim lying adjacent to the Lotta on the northeast, the Taku lode

(Testimony of Lloyd G. Hill.)

claim, we found one of the corners of that.

Q. Where were those stakes you have testified concerning that you saw, that you had seen before, in reference to the location—that is, were they in different places or the same places you had seen them before?

A. They were in the same place—stake Number 6 and stake #1.

Q. Now, in making that Forrest lode survey, I observe on the map there that there is a corner called W. C. 2, which is on this identified exhibit “N,” apparently on the boundary line of the Lotta lode claim, the side line—in making this survey of the Parish, was there any corner established there at that place at that time? I mean, in making the survey of the Forrest. A. There was.

Q. Why was the corner established there at that time?

A. To show the intersection between the southeast end line of the Forrest lode with the southwest side line of the Lotta lode. [1228]

Q. Have you seen that corner since it was established? A. I have.

Q. When did you see it next?

A. I saw it next in—I used to see it quite often, every time I walked up the Basin.

(To follow omission on page 110 of transcript [printed record, page 256] as indicated by * * *.)

Q. I will ask you if on this lower side-line of the Lotta you saw any stakes there?

(Testimony of Lloyd G. Hill.)

A. I did, yes, sir. I saw stake #5, stake #6, and I saw the southeast lode line stake.

Q. Where were they then with respect to where you had seen them before?

A. In the same place, according to my judgment.

Q. You said you saw corner stakes 5 and 6—corner stakes 5 and 6 of what claim?

A. Corner stakes 5 and 6 of the Lotta.

Q. Was this little old house still there, then?

A. Yes, sir.

(To follow omission indicated on page 111 of transcript [printed record, page 258] by * * * .)

Q. (Repeated.) I will ask you if in those official field-notes of the survey of the Royal lode, if you found any ties made to any of the corners of the Lotta claim? A. Yes, sir.

Mr. HELLENTHAL.—I think that is immaterial—we don't know when the Lotta was surveyed. This has nothing to do with the location of the Lotta, whether it is a subsequent survey, I don't know.
[1229]

By the COURT.—I think it is objectionable as not being the best evidence.

Judge WINN.—I will ask him if he remembers the courses and distances, what they are. The notes are there, and if he don't remember, we can get them.

Mr. HELLENTHAL.—I would like to know to what extent counsel desires to go into this matter, and what he desires to prove. If he wants to prove something material, I will insist on his bringing in the best evidence.

(Testimony of Lloyd G. Hill.)

Judge WINN.—I am going to show that all these surveys made along here have always recognized the Lotta lode claim as we claim it on the ground and between these stakes. The contention of these parties has been that the lower end of the Lotta claim was not where we contend it is, that is, the reason I am establishing that claim. I am going to tie that Lotta claim in there by those surveys, the survey of the Royal lode claim. There is a tunnel on the Royal, and there is a bearing taken to one of those corners from that natural object. The tunnel is there yet and we tie up one of the corners of the Lotta to that natural object, showing that corner of the Lotta was the same place when the survey was made as it is now—the fact is we are tying the claim in there.

Mr. HELLENTHAL.—I make a new objection then. It clearly appears that all this proof is incompetent, irrelevant and immaterial. In the first place, it would be merely hearsay testimony, anyhow, as to what anybody else recognized as being a corner.
* * * The only way to locate the Lotta claim is by going back to its own patent notes and finding in those notes the ties to which it ties and tying it on the ground by those notes—the stakes that were put there at that time. [1230]

By the COURT.—I don't see why there should be any dispute then. The objection is overruled.

To which ruling the defendant is allowed an exception.

Q. What did you find, Mr. Hill?

A. Corner #5 of the Royal lode is identical with

(Testimony of Lloyd G. Hill.)

Corner #5 of the Lotta lode and the northwest lode line post of the Royal lode is identical with corner #3 of the Lotta lode. From the Corner #3 of the Lotta, identical with the northwest lode line of the Royal, there is a bearing given to an old tunnel—

Mr. HELLENTHAL.—Let it be understood that we object to all this line of testimony with reference to the location of another claim located subsequent to the Lotta and any effort to establish the location of the Lotta upon the ground by proving that some other survey was made to fit it as they claim it should be fixed.

By the COURT.—This question of whether the boundaries as marked control over the calls of the patent not having been yet decided, the question of the recognition of these boundaries as marked may be made in the final determination of the case, and for that reason the objection is overruled. The record will show your objection to this line of evidence and exception is allowed.

WITNESS.—(Continuing.) The bearing of an old tunnel is given from that point. The tunnel bears south 17—13 East 132.4 feet distant—

Mr. HELLENTHAL.—If they want to show the courses and distances they must call the man that made the survey.

Q. (By the COURT.) You said George W. Gar-side made the survey? A. Yes, sir.

By the COURT.—I will sustain the objection as not the best evidence. [1231] If you are going to prove that, prove it by the notes themselves.

(Testimony of Lloyd G. Hill.)

(To follow omission on page 113 of original transcript [printed record, page 259] as indicated by * * * .)

Q. Did you find any corner posts, stakes or monuments marking the boundary of the Lotta lode claim in August, 1910, that you were on this property?

A. Yes, sir; I did.

Q. State to the Court what you found there.

A. I found post Number 3, post #4, post #5, post #6, post #1 of the Lotta.

Q. Where were those posts in 1910 in respect to where you had seen them before?

A. I think they occupied the same position that I had seen them in the first time I had ever seen them.

Q. Was this old cabin that is marked on this exhibit "N," house, at the lower end line of the Lotta claim, there at all these times that you went upon that ground? A. It was; yes, sir.

Q. Did you ever observe the relative location of this cabin and the stake, the corner post there you testified as being one of the corner posts of the Lotta lode claim? A. Yes, sir; I did.

Q. At those various times that you saw this corner post or stake, how was its location in relation to this building—did it change any, or was it the same?

A. It seemed to be about the same. I never measured it prior to 1910, but estimating the distances, I should say it was practically the same—it may have been changed a few feet. [1232]

Q. Did it look like the post had been reset and changes made in that respect?

A. No, sir; it did not.

(Testimony of Lloyd G. Hill.)

Q. In what condition of preservation was the stake?

A. The original patent stake is there tacked or tied—

Mr. HELLENTHAL.—I don't like that expression, the original patent stake, etc. .

By the COURT.—That will be stricken.

WITNESS.—(Continuing.) There was a small stake there, two by four inches; the bottom of it is rotted off and *it marked* with black paint P. 5 U. S. S. Lotta, and that is tacked or tied—I am not certain which; it is in a mound of stones—to a larger stake, a stake 5 inches square.

Q. And that is the condition it is now?

A. On one side—and on the southeast side it is marked Royal 5 S. 238.

Q. Now, I will ask you from those various surveys you made there with Mr. Garside and assisted him in making, I want to ask you if those were the original corner posts put on there and used as survey corners. A. I think they were; yes, sir.

Mr. HELLENTHAL.—I object to the question as too indefinite.

By the COURT.—The objection will be sustained to the question in its present form.

Q. I will ask you if that stake that you spoke of down there near the old cabin, the old stake, was taken out—from the surveys you made with Garside, assisted him in making and the ties you ran off these lines, etc., I will ask you, then, if that appeared to be

(Testimony of Lloyd G. Hill.)

the original corner post that the claim was patented by? [1233]

Mr. HELLENTHAL.—We object to that as not a proper subject for expert testimony.

Objection overruled. Defendant allowed an exception.

A. It did.

Q. I will ask you if, in these various surveys that you were there with Garside on, if he always recognized the lower side line of the Lotta lode claim to be on the ground lying between Corners #5 and 6 as indicated on this exhibit?

Mr. HELLENTHAL.—We object to that as incompetent, irrelevant and immaterial and as hearsay.

Objection sustained.

Q. Now, I will ask you, Mr. Hill, as to when you and Garside were up there in making this survey to determine as to where the high line flume of the Jualpa Company tapped Gold Creek—I will ask you where you and Garside together located the lower side line of the Lotta claim.

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. He located it as shown on that map and from the corners as I have described.

By the COURT.—You were asked how both of you located it.

A. We both located it in that manner.

Mr. HELLENTHAL.—The objection goes fur-

(Testimony of Lloyd G. Hill.)

ther—what Garside did is another matter that this witness cannot testify to.

By the COURT.—The objection comes too late. Objection overruled. Defendant allowed an exception.

Q. What other, if any, monuments or corner posts of the Lotta lode claim did you, together with Garside, find upon this Lotta claim when you were up there and had these trips, besides 5 and 6 and those along on that lower side line? [1234]

A. We found 5 and 6 and corner 1, corner 3 and corner 4 of the Lotta.

Q. Have you ever run off the side and end lines of the Lotta lode claim lately to ascertain where they were with reference to these particular monuments that you have just spoken of? A. Yes, sir.

Q. When did you run off the boundaries of this claim to ascertain that?

A. Last fall, I forget just what date, but some time, I think, in November.

Q. Did you find these corner posts or some other posts on the boundary lines of the claim at that time?

A. I did; yes, sir.

Q. And these new ones you have just mentioned, how were they located when you ran it off last fall in relation to their location, when you first saw them there? A. In the same position.

Q. Mr. Burton has called my attention to the words, "same position," that may be a relative term, whether they were standing straight or standing over—do you mean the same place?

(Testimony of Lloyd G. Hill.)

A. Yes, the same place, the same locality.

(To follow omission on page 122, as indicated on the said page of the original transcript [printed record, page 269] by * * * .)

Q. I have the complaint in this action; I wish you would take it and look at the survey and description as given of the Lotta lode claim, and I will ask you if that is a correct description of the Lotta lode claim as it is on the ground according to the several monuments that you have been testifying to? Compare it with your map—you gave me [1235] the description, and I think I have it right, but I want to verify it.

Mr. HELLENTHAL.—That is, you are merely asking him if you have correctly copied the notes into your complaint, according to his way of looking at it?

Judge WINN.—Yes, sir.

A. The courses are not the same as they are on this plat; no sir—the ground is the same, however—though.

Q. What do you mean by the courses?

A. I mean that the courses of the lines are changed, although the claim is still a parallelogram, but merely the courses—you can call a line by any course; there is a slight difference here on that made as made, the courses are taken from the true meridian as determined on the ground. While we have a magnetic of $31^{\circ} 54'$ the patent notes have a variation of 30° magnetic.

Q. I have sent for the field-notes of the Lotta, and what I desire to know is whether or not this map and

(Testimony of Lloyd G. Hill.)

plat, exhibit "N," describes the Lotta claim as it is exactly on the ground. A. Yes, sir; it does.

Q. Then will that description in the complaint there—does it conform to this particular piece of ground as described on the map?

A. It does, yes, sir.

Q. I have the official survey with the field-notes here—I will give you the field-notes as the survey was made by Geo. W. Garside. I want to go into this matter of the ties up the creek, if there are any ties to which the Lotta was tied in the official survey of it—these are the notes of the Lotta?

Mr. HELLENTHAL.—We object to these notes because they are all [1236] merged in the patent and it is beside the question—the patent is deemed the official judgment of the Government and cannot be attacked.

Judge WINN.—The description of the Lotta lode claim we expect to show is exactly on the ground as it is in the patent and is in the official field-notes, except there is a mistake in these courses and distances up in the basin.

Objection withdrawn.

A. The field-notes do not show that it was tied to the monument.

Q. Does the survey of the Lotta lode claim show that it is tied to any natural object?

A. The only tie is this—that this claim is bounded on the northeast by the Taku Gold & Silver, and on the southeast by the Capital lode.

Q. Go ahead and answer the question as to what,

if anything, it is tied up to.

Mr. HELLENTHAL.—Do I understand the notes are in evidence?

By the COURT.—I do not understand they are in evidence. Mr. Hill was asked to read—to find in them what the tie was and read it. That is as far as it has gone.

Mr. HELLENTHAL.—I object to any portion of the notes going in without the whole notes.

Objection sustained.

Judge WINN.—I am going to offer that part of it, get a certified copy of that part of them * * * the whole field-notes in the case would extend over such an amount of copying that it would burden the record.

Mr. HELLENTHAL.—I have no objection to the surveyor general substituting a certified copy of these notes at any time. They may remain in the surveyor general's office and the record may show a certified copy may be placed in the record. [1237]

After discussion, the objection to the field-notes was sustained unless the entire field-notes were offered in evidence.

Mr. HELLENTHAL.—I move now whatever Mr. Hill testified to from the notes be stricken unless the whole notes go in.

Motion denied. Defendant allowed an exception.

Q. I have the patent of the Lotta which was offered in evidence in this case on yesterday. I wish you would examine that portion of it that refers to the Lotta claim and see if in the survey as made, in

(Testimony of Lloyd G. Hill.)

which the Lotta is one of the claims, if that group of claims is in any way tied up to any monument, United States monument or a hill or monument, or some object—something or that kind.

A. The tie is made from the corner of #2 of the Crown Point, Survey #90 to United States Mineral Monument No. 2, and the call is U. S. Mineral Monuments #2 bears south 65° and 37' east 6530.6 feet distant.

Q. Now, I will ask you to take this certified copy of the plat of the survey under which the Lotta was patented and indicate to the Court if any such tie as you have spoken of is indicated on this plat.

A. Yes, sir; that is the same tie identically that is on this plat.

Q. I will ask you if the tie that is read from the plat attached to the patent is the same as the tie indicated on this exhibit "B," which we have offered in evidence? A. Yes, sir; it is identical.

Q. Now, that is the tie, then. Is that also indicated on this exhibit "N" which you have been testifying from? [1238] [1239]

A. Yes, sir; that tie is shown on this map; yes, sir.

Q. Have you tied up any portion of the Lotta claim up there to this monument Number 2 of the Crown Point and ascertained as to whether or not the tie there is correct? A. Yes, sir; I have.

Q. I understand that this tie indicated on "N," commencing at this point Number 2 of the Crown Point and as it is on exhibit "B" and as it is on the

(Testimony of Lloyd G. Hill.)

plat that is attached to the patent, is all the same, is it?

Objected to as leading. Sustained.

Q. How do they compare?

A. The connection marked in red on this plat Corner #2 of the Crown Point and the connection shown on the exhibit "B"—

Mr. HELLENTHAL.—I want to object to this class of testimony, because the monument is tied to the Crown Point, a subsequent and independent survey and not part of the Lotta survey.

By the COURT.—If it is not coupled up in some way so it is comprehensible, it will be either stricken out or not recognized.

Mr. HELLENTHAL.—With that understanding I will withdraw the objection.

WITNESS.—(Continuing.) The connection shown in red on this plat exhibit "N" and the connection shown on exhibit "B" and the connection shown on the map attached to the patent are all the same.

Q. This Lotta is contained in this group of claims that is indicated on all three of these exhibits, is it not? A. Yes, sir; it is.

Q. And the only tie that that whole group of claims has to any [1240] other monument, is what monument?

A. The Monument Number 2 Silver Bow Basin. the land office regulations at that time only required one tie to a group of claims that were contiguous.

Q. I will ask you if you have made an actual survey and measurement of the tie that you have just

(Testimony of Lloyd G. Hill.)

been testifying concerning on the ground, and ask you if the tie as you have surveyed it from the Corner Number 2 of the Crown Point to this monument, if you have found it the same or different from what it is in these exhibits?

A. I found it different. I assisted on that. I didn't run it entirely alone on this survey, the connection. Mr. Wettrick and I made a traverse together and checked each other.

Q. When did you make them?

A. We made that sometime last November.

Q. What difference did you actually find to exist between that tie as indicated in this official map and also as it appears in this map that is in the record and is a part of the patent?

A. You are referring now to Corner #2 of the Crown Point? A. Yes.

A. I found a difference of approximately 125 feet.

Q. To the mineral monument? A. Yes, sir.

Q. Was that distance greater or smaller than was indicated on this map and plat attached to the patent?

A. The distance from the monument to the claim in the patent is greater than it really is from an actual survey on the ground. This claim would be further away from the monument if the patent were taken to locate the claim. [1241]

Q. Now, taking this number 2 corner of the Crown Point as indicated on "N" and going down the side line, or the end line, down to Corner 6 of the Lotta, following along the end line of the Crown Point,

(Testimony of Lloyd G. Hill.)

Keystone, Taku and Lotta—what, if anything, do you find about the actual measurements on the ground compared as they are in this—the difference in the width of those claims compared—how is that?

A. The length of the claims on the end line, that is, the Crown Point, the Keystone, the Taku and the Lotta, along their respective northwest end lines are very close to the patent notes. There is a slight difference because a great many years have elapsed and some were leaning.

Q. Now, I will ask you to take it for granted that the actual survey you made of this tie, you and Mr. Wettrick, from Corner #2 of the Crown Point up to this monument, is correct—the one you made, and the one that is given in the field-notes is incorrect—what difference, if any, would that make in the location of the Lotta on the ground?

Mr. HELLENTHAL.—We object as calling for a conclusion of the witness.

Objection overruled. Defendant allowed an exception.

A. It would make a difference of—it would throw the Lotta 94 feet, the side line of the Lotta, pretty near due east 94 feet—about 94 feet.

Q. Would that be down the creek or up the creek?

A. It would sorter cross the creek more—the creek runs nearly north and south through the Lotta.

Q. I will ask you if there is any other tie of the Lotta claim in the field-notes than the one you have just indicated in the deed you have just looked at

(Testimony of Lloyd G. Hill.)

and the map attached to it—the patent, I mean.
[1242]

A. Simply the tie calling for the side line of the Taku lode—in the patent, do you refer to now, or the field-notes?

Q. Yes, the patent.

A. There is no further tie to the Lotta in the patent.

Q. There is one question I omitted to ask you concerning the corner posts and stakes of the Lotta you found on the ground. I will ask you if you found any other witness corners, witness trees or anything of that kind.

A. When I assisted on the survey of the Forrest and Etta lodes in 1900 I found three trees blazed up there on what is corner #6 of the Lotta lode, and at that time I reblazed them, and those trees are still standing there within a few feet of the corner.

Q. The blaze is still to be seen on those trees?

A. Yes, sir.

Q. (By the COURT.) Are these called witness trees or monuments in the patent? A. No, sir.

Q. There is not any in the patent or the field-notes that you have discovered?

A. No, there is none in the field-notes or patent.

Q. I asked the question particularly to show that he identified it by the trees. Those trees, you say, are still there and still the blaze shows upon them?

A. Yes, sir.

Q. And how is this post as it now stands with reference to these blazed trees, in comparison to where

(Testimony of Lloyd G. Hill.)

it was when you saw it in 1900?

A. I think it is in the same place.

Q. (By the COURT.) Are they the nearest trees to the stake? A. Yes, sir. [1243]

Q. I didn't just understand what you meant by your answer when I asked you the question to take it for granted that the actual survey that you and Wettrick made of this tie from the corner Number 2 of the Crown Point up to that monument was correct, as to what effect that would have upon the Lotta claim, and of course taking it for granted that the one in the patent is wrong?

A. It would have a tendency to cross the Lotta claim 94 feet further to the west and would throw it further down the creek, down Gold Creek.

Judge WINN.—That is all at this time.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. It would throw it further to the west, you say?

A. Yes, sir.

Q. Didn't you say a moment ago that it would throw it to the east?

A. Well, that was just simply an oversight, in direction.

Q. You meant to the west.

A. It is evident it is to the west; it couldn't be to the east.

Q. You said in answer to a question it would throw it to one side 94 feet. Is that right? A. Yes, sir.

Q. Not down the creek, but to one side—slide it

(Testimony of Lloyd G. Hill.)

across the creek and in sliding it across the creek it would take in a certain portion of the creek.

A. It necessarily would have to, but the creek is almost parallel with the line.

Q. But the claim itself would be slid across the creek?

A. Yes, but it would take in further down the creek than it does at present. [1244]

Q. How much further?

A. It is pretty hard to determine that.

Q. You can't determine that?

A. You could by drafting it out. I can't say here how much further.

Q. You know it would throw it 94 feet to the west rather than the east?

A. Almost, because the connection there is almost due east and west to the monument.

Q. How far is the mineral monument from the Lotta monument #2 approximately—about 2 miles, is it not?

A. Oh, no; the line is about 7,200 feet; that is a direct line—of course you can't run a traverse line that distance.

Q. In running a traverse line you would have to run about two miles? A. Yes, sir.

Q. Have to survey about two miles to get your distance? A. Yes, sir.

Q. And have to rely upon your instrument in getting that survey? A. Yes, sir.

Q. And in surveying that you would run to a corner of the Crown Point? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Then you assume the Crown Point is accurately located on the ground, that it is full size and that sort of thing? A. No, you run the Crown Point.

Q. Before you can run from the Crown Point to the Lotta you have to locate the Crown Point?

A. Yes, sir. [1245]

Q. And after you run the Crown Point out—what do you run out, the Taku Gold & Silver?

A. The Keystone.

Q. And after you run the Keystone out, then you run what out?

A. The Crown Point and Taku Gold & Silver and then the Lotta.

Q. The Lotta is not tied to the mineral monument in that patent note, is it? A. No.

Q. It is tied to the Taku Gold & Silver?

A. Yes, sir.

Q. And the Taku Gold & Silver is tied to the Keystone, is it? A. Yes, sir.

Q. And the Keystone is tied to the Crown Point?

A. Yes, sir.

Q. And the Crown Point is tied to the mineral monument? A. Yes, sir.

Q. The Lotta is number 87? A. Yes, sir.

Q. The Taku Gold & Silver Number 88?

A. Yes, sir.

Q. The Keystone Number 89? A. Yes, sir.

Q. And the Crown Point 90? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. And the Lotta itself is not tied to the mineral monument at all? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. The Lotta is not tied to the mineral monument but the Crown Point is tied to the mineral monument—that is right? A. Yes, sir.

Q. The Lotta itself is not? [1246]

A. No, only indirectly—to a surveyor it would be tied; they look at it and figure in fifteen minutes the connection to the monument.

Q. By figuring, you mean figuring from the Crown Point to the Lotta? A. Yes, sir.

Q. But the Lotta itself is not tied to the mineral monument? A. No.

Q. It is merely a question of figuring to find out where the Lotta is?

A. From the field-notes, from the various claims intervening between the tie on the Crown Point and your corner of the Lotta.

Q. You figure, then, to the Lotta? A. Yes, sir.

Q. Look at that map and tell me if there is not some tie to a natural object on that map. Examine it closely.

A. Yes, it is very indefinite. It is marked here, I believe, Gold Creek, the intersections of the various lines it goes through.

Q. How far is post Number 5 from the creek on that plat?

A. Post #5 is marked to the northeast of corner #5 1200 feet.

Q. How far is it on your plat?

A. On my plat it is marked 693 feet.

Q. Your plat, then, does not correspond with the patented notes in that regard, does it? A. No sir.

(Testimony of Lloyd G. Hill.)

Q. Did you find any other ties there? I call your attention to the upper corner there. See whether it is not tied to the creek there, too. A. Yes, sir.

[1247]

Q. How many feet to the creek?

A. 75 feet, I think.

Q. Look closely and you will see it is 40.

A. 40 feet.

Q. Look at your chart and see how far that post is—what is the number of that post?

A. Post Number 2.

Q. See how far post #2 is from the creek according to your chart.

A. It is right in the creek practically.

Q. Then, your chart in that regard is not correct, is it—when I say “your chart,” I refer to exhibit “N”—exhibit “N” is not correct in that regard, is it?

A. Well, it does not compare with this plat here which has been drawn in the record; that is not the original patent plat.

Q. Does exhibit “N” check with the plat that is offered in evidence as part of the patent? A. No.

Q. If that plat is the plat of the Lotta claim, then the Lotta claim is not correctly platted on exhibit “N,” is that true—yes or no?

A. That map is incorrect I think.

Q. I say if this map is correct as a plat of the Lotta claim, then the Lotta claim is not correctly platted on your plat exhibit “N”—isn’t that true? If that plat which is offered—

(Testimony of Lloyd G. Hill.)

A. Well, the Lotta might not be correctly platted, but the creek—

Q. If that plat which is offered as part of the patent shows [1248] stake #2 of the Lotta as being 40 feet from the creek which it does, does it not?

A. Yes, sir.

Q. Then exhibit “N,” your map, does not correctly plat the Lotta with reference to stake #2, in accordance with the map that is offered as part of the patent? A. No, sir.

Q. Isn't that true? A. Yes; that is true.

Q. Stake Number 2 on your plat is in the centre of the creek? A. Yes, sir.

Q. The testimony that you gave, then, when you said that there were no other ties in this chart is erroneous in that regard, is that not true?

A. I supposed that you meant definite ties.

Q. The ties that would check with your surveys?

A. No; ties that you could commence from—I believe you can't commence from the creek.

Q. Ties that could be moved, ties that could be more readily moved than a creek?

A. No; a creek is the most movable thing in the world; it can be switched 200 feet.

Q. The creek as it crosses the Lotta claim and before it enters the Lotta claim, flows through a narrow rocky gorge?

A. It flows through a comparatively narrow channel; yes, sir.

Q. A channel that cannot be changed—is not that true? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. It can't be entirely changed by erosion.

A. It can be changed.

Q. Earthquakes may change it? [1249]

A. No, it can be changed by high water or low water.

Q. How high is that channel there, that rock gorge?

A. It varies from 25 to 40 or 50 feet in width.

Q. How wide is it at this point opposite stake #2?

A. Opposite stake #2 it is probably 25 or 30 feet in width, perhaps 40.

Q. The creek has then 25 or 30 feet to flow through? A. Yes.

Q. Before it reaches the rocky precipitous bank?

A. Yes, sir.

Q. And each side of that channel, 25 to 30 feet wide, is a rocky precipitous bank that rises up a large number of feet?

A. Yes, rather steep—not rocky, though. It is sliderock and gravel.

Q. How high does it rise?

A. It rises up to the summit of Mt. Juneau.

Q. Clear up the mountain? A. Yes, sir.

Q. Many hundred feet high?

A. Many hundred feet.

Q. The creek flows through that kind of a gorge almost the entire distance across the Lotta?

A. Pretty near—it widens out in several places.

Q. And narrows up again?

A. Yes, narrows again.

(Testimony of Lloyd G. Hill.)

Q. Some places it is not over 15 feet wide?

A. Twenty-five feet wide is the narrowest place, I know.

Q. And that is about the average width of the gorge through which the creek flows across the Lotta claim? A. Yes, sir. [1250]

Q. And it can shift within that 25 feet from one side to another—isn't that true, at high water?

A. It varies.

Q. When it gets to the edge of that 25 feet it can go no further because it is up against the rocky bank, isn't that true, either way? A. Yes, sir.

Q. It only has the 25 feet within which to shift?

A. Yes, sir.

Q. There couldn't then be more of an error in the creek—that is, the creek couldn't shift, more than 25 feet?

A. You are referring now to stake No. 2?

Q. I am referring to stake No. 2 to which you have just testified the gorge was about 25 feet wide.

A. Yes, it couldn't shift much over I wouldn't say probably 25 to 30 feet or 40 feet, I made that answer general.

Q. Your stake is in the middle of the creek?

A. Yes, sir.

Q. It is standing there now?

A. No, I don't think so—that stake has not been found; I have not seen that stake for years as I testified.

Q. You know the courses given in this patent?

A. I think so; yes, sir—the Lotta patent is it?

(Testimony of Lloyd G. Hill.)

Q. Yes, the Lotta patent—87? A. Yes, sir.

Q. You begin at Number 1, don't you?

A. Yes, sir.

Q. What is the first course given in the patent?
Take the book—what is the first course given in the patent there?

A. The first course is north $56^{\circ} 15'$ east 150 feet.

[1251]

Q. What is the course given on exhibit "N"?

A. The course on exhibit "N" is north $58-23$ east.

Q. That course, then, doesn't correspond with the course given in the patent? A. No, sir.

Q. What is the next course given in the patent?

A. Second course south $33^{\circ} 45'$ east.

Q. What is the course given on exhibit "N"?

A. The course given on exhibit "N" is south $36-31$ east.

Q. That course doesn't correspond with the course given in the patent either? A. No.

Q. What is the distance given in the patent between those two corners? A. 1500 feet.

Q. What is the distance given in the patent between corners Number 1 and 2? A. 150 feet.

Q. What is the distance on your exhibit "N," between 1 and 2? A. 150 feet.

Q. It is 150 feet? A. Yes, sir.

Q. What is the distance on exhibit "N" between corners Number 2 and 3?

A. In the patent or on my map?

Q. The patent first? A. 1500 feet.

Q. How much on your map? A. It is 1526 feet.

(Testimony of Lloyd G. Hill.)

Q. That line doesn't correspond as to distance either, then? A. It is a little longer. [1252]

Q. 26 feet longer? A. Yes, sir.

Q. And off how many degrees on the course?

A. Well, it is off one degree I think.

Q. Now, take the course from stake Number 3 to stake Number 4—what is the course given in the patent? A. The course is south $56^{\circ} 15'$ west.

Q. How many feet? A. It would be 150 feet.

Q. What is the course given on exhibit "N"?

A. It is south $57-53$, 140.38 feet.

Q. That doesn't correspond then either?

A. No, sir.

Q. What is the distance given on exhibit "N"?

A. 140.38.

Q. That then doesn't correspond with the notes in the patent? A. No.

Q. Neither as to course or as to distance?

A. No, sir.

Q. What is the next course given in the patent?

A. The next course is a continuation of that line south $56-15$ west, 150 feet.

Q. What is the course and distance on your exhibit "N" to correspond to that?

A. The corresponding course is $58-23$ south, west 144.9.

Q. That doesn't correspond with the course either?

A. No, they are all a little shorter than the patent.

Q. It doesn't correspond as to distance either, does it? A. No.

Q. That is short as to distance? A. Yes, sir.

[1253]

(Testimony of Lloyd G. Hill.)

Q. And the other is short as to distance?

A. Yes, sir.

Q. And the previous one is long as to distance?

A. Yes, sir.

Q. The trifle of 26 feet? A. Yes, sir.

Q. What is the next course given in the patent?

A. The next course is north 33-45 west 1500 feet.

Q. How does that check up with your exhibit "N"? A. Mine is north 31-36 west, 1526 feet.

Q. Exhibit "N" doesn't correspond with the patent course, then? A. No.

Q. And the distance is 26 feet greater than the distance given in the patent? Is that right?

A. Yes, sir.

Q. What is the next course in the patent?

A. The next is north 56-15 east 150 feet.

Q. What is the course on exhibit "N" to correspond with that?

A. The course on exhibit "N" there is north 58-24 east 140.9.

Q. That doesn't correspond, then, with the patent either as to course and distance?

A. That is shorter than the patent.

Q. And doesn't correspond as to course?

A. Not quite.

Q. Now, Mr. Hill, this exhibit "N" is made with reference to certain stakes that are situated upon the ground, is that correct? A. Yes, sir.

Q. In 1898 you first saw such stakes on the southerly line of the Lotta claim? [1254]

A. Yes, sir, I did.

(Testimony of Lloyd G. Hill.)

Q. You saw in that year three stakes there, didn't you? A. Three stakes.

Q. What were they?

A. One was stake #6 at the northwest corner of the Lotta; another stake was a Forrest stake at the intersection of the Forrest with the west side line of the Lotta and the other was stake #5 at the southeast corner of the Lotta.

Q. That was in 1898 you saw those three stakes?

A. Yes, sir.

Q. Number 5, Number 6 and a stake which is situated on that line drawn between 5 and 6—that is a Forrest stake? A. Yes, sir.

Q. A witness stake of the Forrest lode?

A. Yes, sir.

Q. You are sure they were there in 1898?

A. Yes, sir.

Q. Each one of these three stakes? A. Yes, sir.

Q. What was the condition of stake Number 5?

A. Stake Number 5—I couldn't go into minute details; it was a stake 2x4 about 3½ feet long in a mound of rock.

Q. Painted? A. Yes, sir.

Q. Painted white? A. Painted white.

Q. Black figures on it?

A. Black figures on it in paint.

Q. And then painted? A. Yes, sir.

Q. Pretty well preserved? [1255]

A. Yes, it was very well preserved at that time.

Q. What was the condition of the Forrest stake?

A. The Forrest stake was not so well preserved—

(Testimony of Lloyd G. Hill.)

that was the same kind of a stake—2x3 it was.

Q. What was the condition of this corner?

A. That was the same stake—a similar stake.

Q. 2x4?

A. 2x3—set in the ground and they were all marked with paint and painted white.

Q. With a black legend on it? A. Yes, sir.

Q. Black figures? A. Yes, sir, black figures.

Q. Marked to indicate what the corner was?

A. Yes, sir.

Q. And marked Corner Number 6 of the Lotta?

A. Yes, sir.

Q. No other marks on it?

A. Corner Number 6 and I think U. S. S. 87 Lotta.

Q. No other marks on it? A. Yes, sir.

Q. What were the other marks?

A. Etta Corner 2 U. S. Survey 258.

Q. That was back in 1898? A. Yes, sir.

Q. You are sure that was in 1898 when you first came there? A. Yes, sir.

Q. Yet you know that the survey for the Etta and the Forrest were not made until 1900, don't you?

A. No, they were made long before that, in 1893; there have [1256] two surveys been made of that group, two official surveys.

Q. Don't you know as a matter of fact that no survey was ever made on the first application for a survey?

A. The survey was made, yes, sir; the plats and field-notes were gotten up and I have them in my office at present.

(Testimony of Lloyd G. Hill.)

Q. Were they ever returned to the surveyor general's office? A. I think not.

Q. Is that Forrest stake the same stake that is there now? A. No, it is not.

Q. Is the Etta stake the same stake that is there now? A. No, sir.

Q. All been changed?

A. Those were changed when the real official survey was made of the Survey 545, that is the Dora group.

Q. That was in 1900? A. Yes, sir.

Q. In 1900, then, those stakes you spoke of you saw there in 1898 were both changed, is that true?

A. I couldn't say positively whether they were taken up or placed alongside; I think they were placed alongside.

Q. Then there would be two stakes?

A. Yes, sir.

Q. You have not seen but one stake there since, have you? A. No.

Q. Then there were new stakes put in?

A. Yes, sir, there were new stakes put in.

Q. Then the natural consequence is the old stakes must have been taken out?

A. Yes, they are not there.

Q. The stakes, then, that are now in the ground are the stakes put there in 1900? [1257]

A. Yes, sir, in reference to those two points, in reference to corner #5 the original stake is still there.

Q. Which original stake?

(Testimony of Lloyd G. Hill.)

A. The original stake I saw in 1898.

Q. That stake is there? A. That stake is there.

Q. What is the survey number of that first survey? A. 258.

Q. What is the survey number of the second one? A. 545.

Q. Isn't that stake marked 545? A. Yes, sir.

Q. It is not marked with the original number then? A. No, sir.

Q. If that had been the stake of the original survey, would it not have the number of the original survey?

A. Well, it has been changed—we are speaking now with reference to stake Number 6?

Q. I am talking of stake Number 5?

A. 5—there is no marks on that at all.

Q. Nothing on that?

A. No, sir, that is just a big stake there—there isn't much on it—a stake 5 inches square.

Q. What is on it? A. I can't recollect now.

Q. Is there anything on it?

A. I don't think there is—I don't think there is anything on it.

Q. You don't think there is a mark on it to indicate what it is? A. No, sir.

Q. Just a stake? A. Yes, sir. [1258]

Q. And way back in 1898 that stake was there?

A. You are speaking of Corner 5 now?

Q. I am speaking of the stake at the intersection of the Forrest and Lotta as you have platted it on exhibit "N."

(Testimony of Lloyd G. Hill.)

A. Back in 1898 there was a different stake there.

Q. There was a different stake there?

A. Yes, sir.

Q. The stake that you saw in 1898, is that the stake that is still there? I mean now the Forrest stake. A. No, sir, it was not.

Q. A different stake has been put there since?

A. A different stake has been put there since.

Q. When was a different stake put there?

A. A different stake was placed there in 1900 on the Forrest.

Q. By whom? A. I placed that there myself.

Q. The stake, then, that stands on what you claim to be the southerly side line of the Lotta, at the point where it intersects with the Forrest, is the stake that you placed there in 1900?

A. At the time the survey was made.

Q. Of the Forrest? A. Yes, sir.

Q. And the stake that you have marked as Corner Number 6 of the Lotta, is that the same stake that you saw there in 1898? A. No, sir.

Q. When was that stake placed there?

A. That stake was placed there at the same time that the Forrest stake was placed there, when the survey was made of the Etta claim. [1259]

Q. And the stake that you set at the intersection at the time of the Forrest survey is still the same stake that is now in the ground, the one set there in 1900? A. The same stake is now there.

Q. And the stake you set as Corner Number 6 of the Lotta, that is the point where 6 is as you platted

(Testimony of Lloyd G. Hill.)

it here, was set by you in 1900 at the time you surveyed the Etta claim?

A. Yes, sir, the old original stake was there at that time.

Q. It was there when you set the new one?

A. Yes, sir.

Q. You set the new one in the ground and pulled it up and threw it out?

A. I don't know what I did with reference to the old stake.

Q. You didn't think it was important enough to know what happened to the old one since you put a new one in its place?

A. I know it was pretty well rotted and wouldn't stay there long anyway.

Q. It was in such a state of preservation that it was necessary to put a new stake in its place in order to keep it there anyhow? A. Yes, sir.

Q. It rotted off in the ground?

A. Yes, sir.

Q. And you put a new stake there? A. Yes, sir.

Q. That was in 1900? A. Yes, sir.

Q. That is a corner stake of the Etta claim—and that corner stake 6 that you then placed in the ground on the Etta claim is still there?

A. Yes, sir. [1260]

Q. The same stake? A. Yes, sir.

Q. On the identical spot? A. Yes, sir.

Q. You were a witness before Judge Lyons last fall where this same case was up or this same matter was up on an application for a temporary injunction,

(Testimony of Lloyd G. Hill.)

were you not? A. I was.

Q. I will ask you if you testified in this language: "How many posts did you find upon the Lotta claim?" That is a question I asked you and you answered in response to the questions I asked you at that time in the hearing before Judge Lyons upon the application for a temporary injunction in this matter—not the same case but a similar matter—you know what I refer to? A. Yes, sir.

Q. You answered—"I found two posts. Q. What posts were they? A. That was Corner Number 5, southwesterly corner and I found a witness corner to Corner Number 6, below the corner. The original Corner Number 6 was up on a steep mountain side and had gone out"—Did you so testify?

Judge WINN.—I want it confined to some certain time—he should specify the time Mr. Hill saw these particular stakes.

Q. In response to a question I asked you which was as follows:

"I will ask you whether or not you ever surveyed the Lotta claim on the ground? A. I have.

Question: What stakes are there on the Lotta claim? Describe the claim and corners.

A. The Lotta Corner Number 5, which is identical with the southwesterly corner, is standing there and there is a pole there with a white flag on it in plain sight from the road across the creek, and I think the corner [1261] the northwesterly corner of the Lotta is standing

(Testimony of Lloyd G. Hill.)

right below the road, which is a very little piece below the road above Gold Creek. Those two stakes are standing and the main thing to determine is the position of the notice of water location and the position of the work where the attempted diversion was made, was to find the southwesterly side line of the Lotta claim between corners Number 5 and 6.

Question: Did you do that? A. I did.

Question: Describe what you found, just what did you do?

Answer: Running that line there I found that the water location was within the boundaries of the Lotta lode, approximately 150 feet, within a foot or two.

Question: I will ask you, Mr. Hill, if that was from actual measurement made upon the ground?

Answer: That was from actual measurement and angles taken. I had a transit.

Question: How many posts did you find upon the Lotta claim? Answer: I found two posts.

Question: What posts were they?

Answer: That was Corner Number 5, southwesterly corner, and I found a witness corner to Corner Number 6, below the corner. The original Corner Number 6 was up on a steep mountain side and had gone out"—

Did you so testify?

A. Yes, sir.

Q. Now, at that same hearing and that same time,

(Testimony of Lloyd G. Hill.)

did you testify as follows:

“Q. When did you put those stakes there?

A. I put the stakes you have reference to there, marked Forrest about six years ago, at the time the official survey was made.

Q. And you put that stake in the ground?
[1262] A. Yes sir,

Q. That is not the original patent stake?

A. It is in the place where the original patent stake was taken up; this was replaced, because the original patent stake was a small stake which was a 4-inch stake—”

Did you so testify?

A. I think I must have if it is there.

Q. Are you now mistaken in your testimony?

A. No, sir, I was mistaken in that.

Q. This is wrong?

A. Yes, sir—I was rushed into that thing and was brought up here and couldn't testify to it, in regard to it, offhand and the dates.

Q. Did you testify as follows:

“Q. Did you take the official patent stake out?

A. I don't know; when I took it up I put it alongside, but the end in the ground had rotted away and the stake probably just disappeared.

Q. Which stake was that?

A. That was a stake which would be a witness stake to Corner Number 6 and also a witness to Lotta 6.

Q. It was not at the corner?

A. No, sir, it was not at the corner; Mr. Ebner

(Testimony of Lloyd G. Hill.)

didn't want to put it there because it wouldn't stay.

Q. It is a witness corner merely to where the true corner would be?

A. It was a witness corner merely to the true corner.

Q. Was that the corner situated alongside the Cape Horn road?

A. Not situated alongside the Cape Horn road, but along the Basin road, way back from Cape Horn—"

You [1263] testified to all these things?

A. I did.

Q. You were mistaken at the time you delivered this testimony?

A. I didn't have preparation enough, I guess—I must have in regard to those stakes.

Q. Were you mistaken with reference to the stakes you testified to, not being in the ground—Corner Number 6?

A. I didn't go up to corner Number 6 at that period because the witness corner was on the line. You can't see from corner 6 to 5 because of an intervening bluff, and I stood there at the Basin road where I had the line defined from one stake to another.

Q. You were mistaken when you stated that Mr. Ebner wouldn't allow the corner to be placed in the ground because it wouldn't remain there—is that a matter of mistaken recollection?

A. Yes, I guess that is.

(Testimony of Lloyd G. Hill.)

Q. That is a matter of mistaken recollection?

A. Yes, sir.

Q. And the whole matter of Corner Number 6 not being in the ground at the time you here testify is a matter of mistaken recollection also?

A. I think so, yes, sir.

Thursday, May 25, '11—Morning Session.

Q. I hand you here the original field-notes of the Lotta Survey Number 87 as they are lodged in the surveyor general's office, they being the same notes concerning which you testified on yesterday—examine them and see if they are the same? [1264]

A. Yes, I think they are.

Q. They are the same? A. Yes, sir.

Q. On yesterday I understand you testified that those notes did not contain a tie to a natural object—is that true? A. Yes, sir.

Q. I will now ask you to re-examine those notes more carefully and see if you did not make a mistake on yesterday in your testimony in that regard?

A. No, sir, I think I examined them; I said it was bounded on the northeast by the Taku Gold & Silver, on the southeast by the Capital. Those are the only ties that I would consider ties.

Q. Please read those notes just as they are given?

A. Beginning at Post Number 1 U. S. Survey 87; first course, N. 56-15 east 150 feet, post marked No. 2 U. S. Survey Number 87; thence second course S. 33-45 east 50 feet, Gold Creek.

Q. That is the second course?

A. Second course.

(Testimony of Lloyd G. Hill.)

Q. Gold Creek you wouldn't consider a natural object?

A. Yes, sir, Gold Creek is. Thence third course S. 33-45 E. 1500 feet, post marked No. 3 U. S. S. No. 87; thence fourth course S. 56-15 west 150 feet, post marked No. 4 U. S. S. No. 87; whence original location notice bears north 33-45 west 300 feet; thence fourth course south 56-15 west 300 feet, post marked No. 5 U. S. S. No. 87; thence N. 33-45 west 1000 Gold Creek, 1500 feet to post marked No. 6 U. S. S. No. 87.

Q. Gold Creek at that point is also a natural object, is it not?

A. Gold Creek is, yes, sir. [1265]

Q. What is the next course?

A. The next course is north 56-15 east 150 feet, post marked No. 1 U. S. S. No. 87, the place of beginning.

Q. That is all there is to the notes?

A. Containing an area of 10.33 acres; this claim is bounded on the northeast by the Taku Gold & Silver and on the southeast by the Capitol lode claim. That is the end of it.

Q. Nothing further in here? A. I think not.

Q. Now, Mr. Hill, you know the way the claims are numbered in the surveyor general's office generally, don't you? A. Yes, sir.

Q. The surveys start there with Number 1 and come on up? A. Yes, sir.

Q. Number 1 being the first survey made in the district? A. No, Number 37 is the first survey.

Q. They didn't have a number 1? A. No, sir.

(Testimony of Lloyd G. Hill.)

Q. Commencing at Number 37? A. Yes, sir.

Q. Number 37, then, is the first survey made in the district? A. Yes, sir.

Q. And Number 38 is the next survey?

A. Yes, sir.

Q. And so on up the line? A. Yes, sir.

Q. Number 300 would be subsequent to Number 200—that is right, is it not? A. Yes, sir.

Q. Then, Survey Number 415, or whatever it is, of the Forrest, would be subsequent to the Lotta, which is Number 87—is [1266] that not true?

A. Well, where the numbers of the surveys are close together, why, although a survey might have a larger number, the actual survey on the ground need not necessarily be made at any given time.

Q. But that is the way they are numbered in the surveyor general's office?

A. The order for the survey; yes, sir.

Q. When an order is issued for Number 87 a surveyor goes out and surveys Number 87; then subsequently the next man comes along and gets the next number that is open—isn't that the way of it?

A. Yes, sir.

Q. If Survey No. 87 is once given to a surveyor, it is not given to a subsequent surveyor?

A. No, sir.

Q. The next man gets 88? A. Yes, sir.

Q. And the next one 89? A. Yes, sir.

Q. And the next 90? A. Yes, sir.

Q. And when the surveyor goes on the ground he has orders for half a dozen surveys, different num-

(Testimony of Lloyd G. Hill.)

bers? A. Yes, sir.

Q. And commences with the lowest number first, does he not?

A. He does at present, but it didn't apply in the early days.

Q. If you got a number of surveys to execute, Mr. Hill, you would commence with the first survey first, would you not? A. No, sir, not necessarily.

Q. You would not? A. No. [1267]

Q. You would commence with the last survey first, would you?

A. It would all depend upon the conditions and the situation of the claims.

Q. Is it not a fact that these surveys were made commencing with the first survey first?

A. No, sir.

Q. Is that not true? A. No, sir.

Q. I hand you here the patent of the Lotta and those various claims as offered in evidence—look at it please?

A. Yes, I have examined them, I think.

Q. According to that patent, isn't the Lotta survey first, No. 87?

A. According to this patent it is merely recorded first—I couldn't say at all.

Q. Those notes don't tie to the Taku Gold & Silver, do they, in the notes there? A. In the patent?

Q. In the patent, just as you read it there before you?

A. No, sir, the notes of the Lotta don't tie to anything in here, the patent.

(Testimony of Lloyd G. Hill.)

Q. The notes of the Taku Gold & Silver do tie to the Lotta, do they not?

A. In one instance they do, yes, sir.

Q. The notes of the subsequent survey—that is the Keystone, is it not?

A. That is the next one, 89.

Q. They do tie to the Taku Gold & Silver, do they not? A. Yes, sir.

Q. The notes of the Crown Point tie to the Keystone, do they not? [1268]

A. The names of the claims are not given, but merely the number of the survey—yes, sir.

Judge WINN.—We object to this as incompetent, irrelevant and immaterial for any purpose whatever

* * * I believe this evidence is simply encumbering the record.

By the COURT.—We haven't developed what the point is yet—objection overruled. Plaintiff allowed an exception.

Q. The notes of the Crown Point tie to the Keystone, do they not? A. Yes, sir.

Q. The Lotta is the only claim in that patent that does not tie to any of the others—isn't that true?

A. I think so, yes, sir.

Q. As a surveyor, you know that you couldn't very well tie to a survey that had not yet been made, could you? A. That question again, please?

Q. You know as a surveyor that you cannot survey a claim and tie it to a claim that does not exist?

A. No, sir, you could not; the survey has nothing to do with it—you can tie it to a location.

(Testimony of Lloyd G. Hill.)

Q. But to a survey that does not exist?

A. No, you couldn't do it.

Q. In other words you couldn't survey No. 88 and tie it to 87 unless 87 had already been surveyed, could you? A. No, sir.

Q. Then the Lotta was surveyed before the Taku Gold & Silver, was it not, if those notes in the patent are correct? A. No, sir.

Q. It was not? A. No, sir.

Q. Look at the notes again? [1269]

A. That is merely the record. The first survey of the claim in that case would invariably be the Crown Point, because there is the basis for your entire calculation; your course and distance is first given from the U. S. Monument Corner No. 2 of the Crown Point; that ties it up—that ties up then this one survey; altho it is a group it is included in one survey.

Q. The Lotta is not tied to the mineral monument, is it, in the patent notes? A. No, sir, it is not.

Q. The Lotta is not tied to anything in these patent notes except the creek, is it? I am asking about the notes in the book, the Lotta patent as actually issued? A. I answered that question.

Q. How did you answer it?

A. I said it was not.

Q. You said it was not tied to anything except the creek. A. It was not.

Q. I again hand you the official field-notes of the U. S. surveyor general's office and ask you to look at them—what is the date of the Lotta survey in those notes? A. September 17, 1888.

(Testimony of Lloyd G. Hill.)

Q. What is the date of the Taku Gold & Silver survey in those notes?

A. September 17, 1888—that is the same date.

Q. I now ask you to look on the first page of those notes under Survey No. 88 and tell me what the date of Survey No. 88 is as indicated on that map—if it is not September 18th instead of 17th?

A. I don't know—it is 17th it looks to me,—I should think it [1270] was 17th—it looks as though it may have been tampered with.

Q. Does that look to you like a 17?

A. That is Survey 89—that is not Survey 88.

Q. Survey No. 89 then is made on September 18th here? A. Yes, sir.

Q. And both Survey No. 87 and Survey No. 88 bear the date of September 17th? A. Yes, sir.

Q. Survey No. 87 occurs first in these notes, does it not? A. It does, yes, sir.

Q. And that is given as being on the 17th of September, is that right? A. Yes, sir.

Q. Then, Survey No. 88 occurs? A. Yes, sir.

Q. That is also given as the 17th?

A. Yes, sir.

Q. That is the one, you say, looks as though it had been tampered with? A. Yes, sir.

Q. And the next one is 89—that is on the 18th, the following day? A. Yes, sir.

Q. Does that look as though it had been tampered with? A. No, sir, it does not.

Q. Now, look at Survey No. 90—see if you can find it? A. Yes, sir—field-notes of U. S. Survey 90.

(Testimony of Lloyd G. Hill.)

Q. What was the date of that survey?

A. September 18, 1888.

Q. The same day 89 was made?

A. Yes, sir. [1271]

Q. Two days were consumed in making the survey? A. Yes, sir.

Q. The first two days were spent on the lower claims, 87 and 88? A. Yes, sir.

Q. And the next two days on 89 and 90?

A. Yes, sir.

Q. Your testimony then that the survey was made by commencing at the Crown Point is in error in that regard—is that not true?

A. No, sir, the statement I made is correct. As a matter of fact, I know that there had been prior surveys made on—

Q. You know as a matter of fact that September 18th comes before September 17th—is that true? (Question withdrawn.)

Judge WINN.—I move to strike out all this evidence that has been gone over—simply to shorten the record—as incompetent, irrelevant and immaterial.

Motion denied. Plaintiff excepts.

Q. Now, Mr. Hill, according to these field-notes, then, the Lotta claim is surveyed with reference to Gold Creek—is that true?

A. Gold Creek is mentioned in the field-notes of the survey, yes, sir.

Q. Stake No. 2 is 50 feet from Gold Creek according to those field-notes? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. The courses in the field-notes are identical with the courses given in the patent, are they not?

A. They are.

Q. And differ approximately two degrees from the courses given by you on your map, exhibit "N"—is that not true?

A. That is true, yes, sir. [1272]

Q. Your map, exhibit "N," then, does not jibe with the field-notes of the surveyor general's office in regard to the matter of courses? A. No, sir.

Q. By about two degrees—is that true?

A. Yes, sir.

Q. If those field-notes are right, your map is in error to that extent?

A. No, sir—that is where I want to explain; you don't understand.

Q. You say, no, sir? A. No, sir.

By the COURT.—Let him make his explanation.

The WITNESS.—It doesn't make a particle of difference what you call that course, you may call that course north, the end lines of the Lotta—that wouldn't affect the location; it is simply a parallelogram and it does not affect the ground in question. The area is the same, absolutely the same—it is simply a question of what course you should say; the magnetic course is 32° off the true course, practically, in this section.

Q. Is that your explanation?

A. Yes, sir—my explanation is— This is the idea I want to impress upon you that the ground as it is described in the patent is identical with the ground

(Testimony of Lloyd G. Hill.)

that is shown on this plat in regard to the Lotta location, although the courses may differ. I run on the variation of 31-54; Garside assumes a variation of 30°; if I should sight for his variation and run a survey over there I would get identically the same courses he gets and that are described in the patent. [1273]

Q. You mean to tell me that if you start at a given point it is immaterial in what direction you go, you will just get the same piece of ground anyhow?

A. It is immaterial what you call that direction, what you may call it by a course.

Q. You mean to say it is immaterial—if you start at a given point and actually go south, you would still be going south even though you said you were going north—is that what you mean to say?

A. Yes, sir.

Q. But assuming that the man that surveyed for the patent actually went as he said he did—do you understand that? A. Yes, sir.

Q. Do you know— Assuming that the man that surveyed the patent actually went as he said he did—he wouldn't go by your lines, would he?

A. Absolutely.

Q. Then, a man going north goes in the same direction that a man goes going south?

A. You can call north south and survey a certain piece of ground and have the margin changed diametrically.

Q. What is the course given in the patent?

A. The course of the said lines is 33-45.

(Testimony of Lloyd G. Hill.)

Q. And what is the course given by you?

A. 31-36.

Q. Now, a man that starts from point No. 2 and takes the course in the patent and another man that starts from point No. 2 and takes the course given by you on your plat here, will travel the same course, is that true?

A. When you have two fixed points you are running for, yes, sir. [1274]

Q. Explain that some more.

A. There is a post No. 5 and a post No. 6 of the Lotta on the ground; in surveying that claim it makes not a particle of difference whether I call that course 33-45 or 10-45 or 15-45 or 5-45—I can give it an assumed course.

Q. Providing stakes No. 5 and 6 are the actual stakes of the Lotta? A. Yes, sir.

Q. Provided that is true? A. Yes, sir.

Q. And that they are the corners? A. Yes, sir.

Q. If you once know the corners you can run a line between those corners without knowing the course? But if you didn't know those corners, didn't know those stakes, it would be very different, wouldn't it?

A. Yes, sir, it would.

Q. Now, then, disregarding those stakes on the ground—I am not questioning that your plat shows the Lotta survey with reference to those stakes.

A. Yes, sir.

Q. But it does not show the Lotta survey with reference to the courses and distances given in the pat-

(Testimony of Lloyd G. Hill.)

ent, does it?

A. The course is different, as I said before.

Q. And the distances are different?

A. The distances are slightly larger on this plat than in the patent.

Q. 26 feet longer, is it not? A. Yes, sir.

Q. And the same is true with reference to the field-notes of [1275] the surveyor general's office?

A. Yes, sir.

Q. Now, commencing at Corner No. 2, taking the course indicated in the field-notes of the surveyor-general's office, running to the creek, you would run 50 feet along that course, would you not?

A. Yes, sir.

Q. Commencing at corner No. 2 on your plat, exhibit "N," you start in the middle of the creek, don't you?

A. Pretty near, it is right on the edge of the creek—Yes, it is nearly the centre of the creek. This plan may be exaggerated a little, it is impossible to run out a creek—it is never done; you sketch in more or less the topography.

Q. Corner No. 2 then on your plat, exhibit "N," with reference to the distance from the creek varies 50 feet from Corner No. 2 as given in the notes of the surveyor general's office?

A. It does approximately, yes, sir.

Q. You know a surveyor, when he surveys a non-navigable stream surveys the thread of the stream?

(Testimony of Lloyd G. Hill.)

A. Yes, sir.

Q. And when you testify, you testify with reference to that knowledge—when you say the creek it is the middle of the creek, of course? A. Yes, sir.

Q. Any surveyor knows that, doesn't he, or is supposed to know it? A. Yes, sir.

Q. Corner No. 2 according to the notes in the surveyor general's office is 50 feet from the centre of the creek?

A. Yes, sir, according to those notes it is. [1276]

Q. And according to your plat, exhibit "N," Corner No. 2 is just about in the centre of the creek?

A. Yes, sir.

Q. Corner No. 5 according to the surveyor general's notes is one thousand feet from the centre of the creek, is it not?

A. It is 1200 feet on that map.

Q. I am asking you about the surveyor general's notes—how far is it from the centre of the creek?

A. Yes, sir—it is 1,000 feet in the notes.

Q. How far is Corner No. 5 from the centre of the creek, according to your plat exhibit "N"?

A. It is 959 feet.

Q. You are off how many feet?

A. I am off the difference between—well, I am off 41 feet.

Q. Look at that again, is that 900 or 600?

A. It is 959 from Corner No. 6, 693 feet from Corner No. 5.

(Testimony of Lloyd G. Hill.)

Q. The question I asked you was, how far is it from Corner No. 5 to the centre of the creek?

A. That is approximately 700 feet.

Q. Give me the number of feet—don't say approximately? A. It is 693 feet.

Q. According to the surveyor general's field-notes that you have read from that distance is 1000 feet, is it not?

A. That distance is 1000 feet according to the notes.

Q. Your plat does not agree with those field-notes in that regard? A. No, sir.

Q. What is the area of the Lotta claim as located by you, between the stakes?

A. The area of the Lotta there is—it is slightly in excess [1277] of the area given in the patent. It is not marked on the map, I don't know,—I couldn't say now definitely.

Q. Somewhat larger, anyhow?

A. Somewhat larger, yes, sir.

Q. Your Lotta claim as located on exhibit "N," then, does not agree with the Lotta claim as located in the patent notes or the notes of the surveyor general's office in that it is larger than either of them, is that not true? A. That is correct.

Q. Now, we will turn to Corner No. 5—you said I think that you surveyed the Colorado lode claim for the Alaska-Juneau Company, did you not?

A. I did, yes, sir.

(Testimony of Lloyd G. Hill.)

Q. You also surveyed the Idaho lode?

A. I did, yes, sir.

Q. You didn't survey the Nevada, did you?

A. No, sir.

Q. Do you know any of the stakes of the Nevada on the ground? A. Yes, sir.

Q. Which one?

A. I know the location—it would be the west end line of the Nevada.

Q. When did you find that?

A. I have seen it since the survey was made—I couldn't say just the date.

Q. You surveyed the Idaho? A. Yes, sir.

Q. You know where stake No. 5 of the Idaho was placed, don't you?

Judge WINN.—We object to that as improper cross-examination.

Objection overruled. Plaintiff allowed an exception. [1278]

Q. You know where Stake No. 5 of the Idaho was placed by you when you made that survey?

A. Yes, sir, I do.

Q. The Idaho and Colorado were made at the same time? A. Yes, sir.

Q. You made the survey for the Alaska-Juneau Company for both at the same time?

A. Yes, sir.

Q. You were a deputy mineral surveyor at that time? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Stake No. 5 of the Idaho as located by you is there in the ground yet? A. Yes, sir.

Q. The same place it was when you put it there?

A. Yes, sir.

Q. The corner of the Colorado which is nearest to Stake No. 5 of the Idaho can also be found in the ground, can it not? A. Yes, sir.

Q. Now, in surveying the Colorado for patent, what point did you start from?

Judge WINN.—I object on the same ground—that it appears from the records in this case that that is their defense and it is improper cross-examination.

By the COURT.—It appears the witness had something to do with surveying it. If his conduct at that time was inconsistent with his statement now, it would be competent. Objection overruled. Plaintiff allowed an exception.

Q. What point did you start from in making the survey of the Colorado?

A. I first located the northeast corner of the Colorado on the [1279] side line of the Royal lode.

Q. What point did you start from in doing that?

A. I started from stake No. 5 of the Lotta lode, Survey No. 87.

Q. Survey No. 87—that is identical with the corner of the Royal?

A. Yes, they are one and the same corners.

Q. That stake was in the ground at that time?

A. Yes, sir, that stake was in the ground at that time.

(Testimony of Lloyd G. Hill.)

Q. You knew it was and had known it was for many years? A. Yes, sir.

Q. You set up at that stake—stake No. 5 of the Lotta? A. I did.

Q. Identical with the corner stake of the Royal at that place? A. Yes, sir.

Q. Then, you ran what course?

A. I ran along the prolongation of the Lotta line 5-6, along the Royal line 4-5, in a southeasterly direction.

Q. How is that again?

A. I ran along the prolongation of the Lotta line 6-5 and continued up the Royal line 5-4 in a southeasterly direction and assumed the course of south 33-45 east.

Q. What was the distance you found between Corner No. 5 which is identical with Corner No. 6 of the Royal— A. 567.64 feet.

Q. That is the distance—now, Corner No. 5 of the Lotta is identical with Corner No. 6 of the Royal?

A. No, Corner No. 5 of the Lotta is identical with Corner No. 5 of the Royal.

Q. What did you establish there?

A. I established a corner of the Colorado claim, the northeast corner. [1280]

Q. Then, where did you go?

A. I then continued along the end line of the Colorado lode 600 feet.

Q. The same course?

(Testimony of Lloyd G. Hill.)

A. The same course, yes, sir.

Q. Then, what did you do?

A. Then I came back.

Q. Did you establish a corner there?

A. Yes, sir.

Q. Then, what did you do?

A. Then, I came back to the northeast corner again.

Q. 600 feet back on the trail? A. Yes, sir.

Q. Then, what did you do?

A. And I ran a line, a traverse line, somewhere near the north boundary of the Colorado lode.

Q. A traverse line?

A. Down towards Gold Creek, Last Chance Basin.

Q. How far did you run that way?

A. I ran down to the basin.

Q. How many feet did you run that way?

A. I at that time thought I ran—

Q. No matter what you thought—how many feet did you run that way?

A. I have some explanation to make—I *make* marked on the map 1472 feet, but I necessarily couldn't run it.

Q. You ran 1472 feet that way, is that right?

A. I think so, or 74—I haven't got these distances on there.

Q. 1474 feet along what course?

A. I said I ran a traverse line—that course and distance was [1281] computed—I had no way of

(Testimony of Lloyd G. Hill.)

determining the northwest corner of the Royal lode.

Q. How much did you compute it to be?

A. I think 1474.11 feet.

Q. Then, where did you run?

A. Then, I stopped—I didn't know where to locate the northwest corner of the Colorado lode; I had a fixed point down in the Last Chance Basin and I knew the corner, the northwest corner of the Colorado lode must be identical with Corner #3 of Survey No. 142 of the Last Chance Placer claim; that corner was obliterated—it was out; I had to determine that corner from some line of the Last Chance Survey No. 142 which I proceeded to do then.

Q. Put it in, did you?

A. I relocated that from the Last Chance patented claim, two corners of the Last Chance that were in position on the south bank of Gold Creek—those corners are still there.

Q. And that is the one you designated—that is the one, the corner, you designated as the southwest corner of the Colorado?

A. That is the corner I designated as the northwest corner of the Colorado.

Q. What is the number of it—5?

A. I think so, yes, sir—5.

Q. Then, where did you go?

A. After I located that corner of the Last Chance, I of course tied my traverse point into that and figured the course and distance of the north side line

(Testimony of Lloyd G. Hill.)
of the Colorado.

Q. And that you found to be 1474.11 feet, is that it? A. Yes, sir.

Q. From there where did you go?

A. From there I have a line 5-6 of the Idaho placer which is [1282] identical with the easterly end line of Survey No. 142 of the patented Last Chance, and I turned the required angle to make the west end line of the Colorado on a course of south 33-45 west or parallel with the side line of the Royal and the east end line of the Royal lode and ran it the required 600 feet.

Q. And located a monument there?

A. I did, I put a post there.

Q. And then, where did you go?

A. Then, I was through.

Q. Didn't you run from that monument to the other corners?

A. It was impossible, it was a precipitous mountain.

Q. Don't you know the rules and regulations of the surveyor general's office require you to run around a claim in full—you know that, don't you?

A. If it is impossible to do it, how are you going to do it?

Q. They require you to run around a claim in full unless it is impossible to do it? A. Yes, sir.

Q. And when it is impossible to do so, they require you to state the reasons why in your certificate and

(Testimony of Lloyd G. Hill.)

returns to the surveyor general's office?

A. Yes—they were not very particular at that time.

Q. Didn't they require it at that time?

A. I don't think so—they never brought that matter up, never instructed the deputies so.

Q. Did you make any such return to the surveyor general's office?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial. Objection overruled. Plaintiff excepts. [1283]

A. What return do you refer to? I made a return of the survey.

By the COURT.—He is asking you if you made a return that you didn't actually survey that because it was impossible.

A. No, sir, I don't recollect—I may have and may not.

Q. Is it not a fact that you can run all the lines of the Colorado on the ground without the slightest difficulty if you are a good surveyor—isn't that a fact?

A. No, sir, it is not my belief that you can.

Q. Did you not testify at the hearing had before Judge Lyons in this court, on the previous occasion, that you did run those lines? A. I couldn't say.

Q. Don't you know what you testified to at that time?

Objected to. Sustained.

Q. Is it not a fact that there is no excuse for run-

(Testimony of Lloyd G. Hill.)

ning a traverse line along that northerly line of the Colorado?

Objected to as repetition. Sustained.

Q. Now, those were the only corners that you located on the Colorado survey you have testified to?

A. Yes, sir.

Q. You tied it up to the Last Chance stakes that you knew were on the ground?

A. I tied it up to the Last Chance on the west and to the Royal claim on the east.

Q. That is that common stake of the Royal and Lotta? A. Yes, sir, that prolonged.

Q. You made no further ties on the survey?

A. No, sir.

Q. You located no other points on the ground when you surveyed [1284] the Colorado for patent, is that true? A. No, sir.

Q. I will ask you, Mr. Hill, at the hearing I have spoken of before, before Judge Lyons when this matter was up on an application for a temporary restraining order in the case in which you were a witness—you are the same Mr. Hill, are you not?

A. I am.

Q. If you didn't testify as follows:

“Q. If the Colorado were actually on the ground 1400 feet it would throw your Lotta claim 200 feet up the hill, would it not?”

That is a question I asked—I asked the question and you made the answer as follows:

(Testimony of Lloyd G. Hill.)

“A. According to the notes it would, according to the field-notes, yes.

Q. According to the official field-notes?

A. Yes, sir.

Q. Don't you know as a matter of fact, Mr. Hill, that the Colorado is 1400 feet long?

A. I know on the contrary that it is not.

Q. When did you first examine the Colorado?

A. I am speaking of—

Q. You make accurate notes, do you not?

A. I attempt to, yes.

Q. Yes— Now, by your own measurement you have made that Colorado—the Colorado is it not 1400 feet long?

A. On the notes at the time, it was represented to be 1475 feet long and a fraction, I think.

Q. Yes—

A. But the trouble is the ground is not there; you come [1285] to make an actual survey of it and the ground is not there.

Q. Did you not make an actual survey of the Colorado for patent? A. I did, yes, sir.

Q. Did you not find 1475 feet there?

A. I didn't do the chaining.

Q. What did you do, Mr. Hill?

A. I tended to the handling of the instruments.

Q. The chainmen deceived you to the extent of two or three hundred feet?

A. Because the claim is not the length the

(Testimony of Lloyd G. Hill.)

patent calls for.

Q. Is it not the length the patent calls for?

A. No, sir.

Q. Who cut that off?

A. Nobody cut that off, it was just a connection between two systems of surveys.

Q. This entire map is based upon just such miscalculations? A. No, sir.

Q. Is that the only miscalculation you made?

A. I didn't make any miscalculation—the calculation was made with care and accuracy; it represents the survey as actually made upon the ground. The Colorado had to fall within that ground; that controversy was with the location of the water rights, to the water claim—I didn't take in to the location.

Q. You testified that the Colorado was accurately delineated upon this map? [1286]

A. Accurately delineated, yes, sir, as far as the notes were.

Q. Yes—from the notes made by yourself, accurately made, is it that the Colorado is fourteen hundred and some feet long?

A. It was supposed to be that long at the time that map was—

Q. Since that time you have cut off 200 feet?

A. And since that time I have made it, I am perfectly willing to make a joint survey.

Q. To prove that you did not make a survey on the ground the first time?

A. To prove that a mistake happened when

(Testimony of Lloyd G. Hill.)

the official survey was made, which is not anything out of the ordinary; surveyors are not infallible.

Q. You have not, however, made a similar mistake with reference to the Lotta?"

—and there is a lot more this—Did you so testify, Mr. Hill?

Judge WINN.—I object to it and ask if he is going to impeach the witness that the questions be separated and put to him one at a time so I can make my objections. I also object further for the reason that he has read from a manuscript here to the witness and we do not know what it is, where it came from or what bearing it has and I do not see what he is attempting to impeach the witness on, etc.

Mr. HELLENTHAL.—The paper I am reading from purports to be a copy of the official reporter's notes.

Judge WINN.—If he wants to impeach the witness, let him put the official reporter on the stand and he can read from his notes.

By the COURT.—He may answer if he can whether he gave that [1287] testimony literally or in substance.

Plaintiff allowed an exception to the ruling.

A. As it is read, as the testimony is read, it is very disjointed and I am confident I never answered many of the questions the way you read them. In the main that is all right, but there are some very important things that mean hardly nothing to me the way you read the testimony.

(Testimony of Lloyd G. Hill.)

Q. There are many things that I have read to you then, Mr. Hill, that you did not testify to on that hearing? A. I rather think so, yes.

Q. Could you name any of them?

A. No, sir, I wouldn't care to.

By the COURT.—You may submit the manuscript to him to refresh his memory.

Mr. HELLENTHAL.—I will have the manuscript marked so it may be identified in the record—it is not being offered. It is marked Defendant's Exhibit Number 1 for Identification, commencing on page 5—take 5, 6 and 7 so that you will be able to identify it afterwards as being the same manuscript.

Q. Now, you may look this over, commencing down there where I have marked and read it over?

A. I have read it.

Q. Now, Mr. Hill, having read that—what purports to be an extract from the reporter's notes—I will now ask you in what regard the reporter's notes are incorrect?

A. I should like to take it up question by question and explain a few things.

Q. I want you to do this—I asked you this question, in what regard are the reporter's notes incorrect, and you may [1288] point out any way you please; don't explain anything, just say in what regard they are incorrect—that is what I am asking you to do.

Judge WINN.—I think under the circumstances, when this paper is not verified by any certificate from the stenographer, the witness would be entitled to

(Testimony of Lloyd G. Hill.)

answer the question in any way he wants to.

Q. Just take those questions now, Mr. Hill, as given you—read the question and read the answer and then just state how it should be—take it one by one?

A. This question—answer my question—if the Colorado was actually on the ground 1400 feet it would throw your Lotta claim 200 feet up the hill, would it not? Answer: According to the notes it would, according to the field-notes.

Q. Is that all right?

A. I wish to say in regard to that that it is incomplete because at that time if the Colorado were 1474 feet long it would either throw the Last Chance patented claims down the creek or it might throw the Lotta up the creek—it depends entirely upon which end you would start from.

Q. Now, do you mean to tell the Court that you made all that explanation and delivered yourself of all that testimony upon that hearing, when that question was asked you?

A. I am of the opinion I did, yes, sir.

Q. You are of the opinion you did and that the reporter is incorrect? A. Incomplete.

Judge WINN.—There isn't anything here to show these are the reporter's notes.

Q. If these are the reporter's notes, then the reporter's notes [1289] are incomplete to that extent, is that true? A. I think so, yes, sir.

Q. Now, proceed to the next one?

A. Question: Yes. Now, by your own measure-

(Testimony of Lloyd G. Hill.)

ment you have made that Colorado, the Colorado is it not 1400 feet long? Answer: On the notes at the time, it was represented to be 1475 feet long and a fraction, I think.

Q. Is that all right?

A. Yes, sir, that is not the place.

Mr. HELLENTHAL.—Let the record show that the witness is reading from Defendant's Exhibit No. 1.

Judge WINN.—I presume under the Court's instructions Mr. Hill can read each question and give explanations?

By the COURT.—Yes, I take it he has looked for those parts of the testimony that he thinks are incomplete or incorrect.

The WITNESS.—(Reading.) Question: Did you not find 1475 feet there? Answer: I didn't do the chaining. Question: What did you do, Mr. Hill, there? Answer: I tended to the handling of the instrument. Question: The chainmen deceived you to the extent of two or three hundred feet. Answer: Because the claim is not the length the patent calls for. That is the answer. I said, I remember distinctly there that the notes would have tallied out or the claim would have tallied out with the notes providing the measurements of the chainman doing the chaining had been given to me properly.

Q. What is that you remember distinctly?

A. I said that the notes would have tallied—the claim would have been 1474 feet long providing the measurements made by the chainman had been given

(Testimony of Lloyd G. Hill.)

to me properly. I remember [1290] distinctly that at the time the question came up about handling the instrument that I enlarged on that to some extent, attempting to show that I very seldom did the chaining—the chaining and measurements were given to me by the assistants, who swear on oath that those measurements are properly made and are embodied in the official field-notes.

Q. Is that all the incorrectness there is in regard to Mr. Robertson's report?

A. Yes, sir, those are the main points.

Q. Those are the main points?

A. That I wanted to take up, yes, sir.

Q. Any other minor parts?

A. No, sir, I don't know that there is—there is none I care to take up—there is some there.

Q. In regard to all the balance of the testimony you say that it is correct?

Judge WINN.—That is, all the balance you read to him.

Q. All the balance I read to you—that portion read to you, is that correct?

A. Yes, in the main it is, I think.

Q. In the main—is it correct or is it not?

A. I can't make it any more definite than I attempted to.

Q. Now, Mr. Hill, how long is the Colorado as platted by you on your plat exhibit "N"?

A. The north side line of the Colorado is 1215 feet long.

Q. What is the course given?

(Testimony of Lloyd G. Hill.)

A. The course given is south 88-54 east.

Q. Is that the same course given in the patent notes? A. It is not, no, sir.

Q. What is the course given in the patent notes?
[1291]

A. I think the course in the patent notes is 83° east—north 83° east 1474 feet and a fraction of a foot.

Q. How many degrees difference is there in the course as given by you and the course in the patent notes?

Judge WINN.—It will be understood that all this examination as to the Colorado is objected to on the ground that it is improper cross-examination and it is a part of their main case.

Objection overruled and exception allowed. (This objection and exception apply to all the examination regarding the Colorado.)

Q. How many degrees difference?

A. Approximately 8°.

Q. Approximately 8°? A. Yes, sir.

Q. In minutes—how many degrees and how many minutes?

A. I won't attempt to work that out in my head.

Q. Something over 8°? A. Yes, sir.

Q. Between 8 and 9°? A. Yes, sir.

Q. If you were to commence at this corner, which is identical with the Last Chance Placer corner—that is the northwest corner of the Colorado, is it?

A. Yes, sir.

Q. That is still on the ground, is it not?

(Testimony of Lloyd G. Hill.)

A. No, sir, it is liable to destruction—very often in times of high water in Gold Creek, it would take it out.

Q. But it is still there now, is it not?

A. I think there is a broken off post there now, yes, sir. [1292]

Q. That ties to Number 5 of the Idaho placer, does it not, that broken off post? A. Yes, sir.

Q. You commenced with that broken off post in making your survey of it—that is you tie to that? You recognize that as a corner in your plat, do you not?

A. I recognize that as a corner, but I don't commence there.

Q. I understand that—that was a misstatement—you recognize that as a corner in making your plat, exhibit "N"? A. I do, yes, sir.

Q. I will ask you to start at that corner, which is marked here Corner No. 5 of the Colorado and take the necessary instruments and draw a line on there 1215 feet along the course indicated in the patent notes—what instruments do you need?

A. I should have a protractor.

Q. Can you figure out where that would land you on the easterly end line of the Colorado?

A. On the easterly end line of the Colorado?

Q. Yes.

A. It would land you much nearer the corner of the Royal, on the Royal side line.

Q. How much nearer?

A. It would be considerably nearer—it would be

(Testimony of Lloyd G. Hill.)

so that the tie from Corner 6 of the Colorado to the Corner No. 5 of the Royal would be thrown entirely off.

Q. It wouldn't fit, would it? A. No.

Q. In order to make tie fit that Colorado you had to move that side line over 8° and something, is that not true? [1293]

A. No, that 8° was made from a connection between two points that are designated in the patent.

Q. What are those points?

A. Those points are the tie on the side line of the Royal lode and Corner Number 5 of the Royal and Corner No. 3 of Survey No. 142 Last Chance Placer.

Q. But that corner of the Colorado is not in place, is it?

A. Yes, sir, that corner is identical with Corner No. 3 of the Last Chance.

Q. I am talking about a different corner. What is the number of this corner? A. Corner No. 6.

Q. Corner No. 6 of the Colorado is not in place now, is it? No stake there? A. No.

Q. You locate that stake by running a line the required distance from the corner of the Lotta, No. 5?

A. I do.

Q. But in order to make that fit, in order to bring post #6 of the Colorado where you claim it is and preserve post #5, which is identical with the post, one of the patent posts of the Last Chance Placer, you have to change the course between post 5 and 6 of the Colorado approximately 8° ?

A. Yes, by connecting those two fixed points, the

(Testimony of Lloyd G. Hill.)

course is changed.

Q. 8° and then some? A. Yes, sir.

Q. Had you not changed that course 8° and then some, had you not changed that course something over 8°, the northerly side line of the Colorado would be many feet in a northerly [1294] direction from where it now is—would it not? A. Yes, sir.

Q. At the point where—

A. At the point where it intersects the side line of the Royal claim.

Q. How many feet approximately?

A. I wouldn't attempt to say.

Q. What would you figure that at approximately? Can't you figure it? A. No, sir, I cannot.

Q. If I should give you a protractor to work with, could you figure it out approximately?

A. Yes, sir, I could. If you have a traverse table I can figure it out quicker.

Q. Would you take any length of time to figure this?

Judge WINN.—We object to this as not proper cross-examination.

Objection overruled. Plaintiff excepts.

The WITNESS.—The distance would be approximately 125 feet; the Corner No. 6 of the Colorado lode would be thrown that far to the Corner No. 5 of the Royal lode, which is the tie.

Q. What, then, would be the difference between that corner, if the corner were there located, of the Colorado and the corner of the Lotta?

A. The distance there would be probably approxi-

(Testimony of Lloyd G. Hill.)

mately 440 feet.

Q. What is the distance as given in the notes?

A. The distance as given in the notes is 567.

Q. 125 feet short? A. Yes, sir.

Mr. HELLENTHAL.—I offer in evidence in connection with the cross-examination of the witness a copy of the official [1295] plat of the survey of the Colorado, so that the testimony of this witness may be more intelligible.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial.

By the COURT.—I understand that Mr. Hill has made the official survey for patent of this Colorado?

Mr. HELLENTHAL.—Yes, your Honor.

Objection overruled. Plaintiff allowed an exception.

The plat is marked Defendant's Exhibit "2" and admitted in evidence.

Q. This certified copy marked Defendant's Exhibit No. 2 ties the Corner #6 of the Colorado to the Corner #5 of the Royal lode, which you say is identical with stake No. 5 of the Lotta?

A. It does, yes, sir.

Q. And the distance there given is how much? 567.64 feet—is that right? A. Yes, sir.

Q. That is along the course indicated upon this plat? A. Yes, sir.

Q. How long is the Colorado now as delineated upon exhibit "N"?

A. The Colorado is 1215 feet long now and a fraction.

(Testimony of Lloyd G. Hill.)

Q. How long was it as originally delineated upon this plat that has been offered in evidence, Exhibit No. 2? A. 1474 and a fraction.

Q. How long was it upon the plat you offered in evidence to the correctness of which you testified upon the hearing before Judge Lyons, in the preliminary hearing?

A. The same distance that is shown on this plat.

Q. The same distance? [1296] A. Yes, sir.

Q. I will ask you if upon the hearing before Judge Lyons, on that occasion, you did not testify as follows; in answer to my questions, which I will read to you: Question: How long does the Colorado scale on that map? I was referring to a map you had then offered for the consideration of the Court and to the correctness of which you had formerly testified—you recall that map?

A. I recall the map.

Q. And in testifying concerning that matter I asked you this question: How long does the Colorado scale on that map, Mr. Hill? Answer: The Colorado scales on this map approximately 1235 feet.

Judge WINN.—What map do I understand you mean?

Mr. HELLENTHAL.—The map used before Judge Lyons on that occasion.

Judge WINN.—I object to the question until that map is produced.

Q. You remember such a map, Mr. Hill, don't you?

(Testimony of Lloyd G. Hill.)

A. Yes, sir, I remember the map I introduced at that time.

Judge WINN.—Can you not identify the map in some way?

Q. You remember a map that was used at that time which you made?

A. I do,—I assisted in making a map. We only had one map—

Q. There was one map used on that occasion?

A. We had to use a tracing—I forget what it was marked.

Judge WINN.—It is in evidence in that case?

Mr. HELLENTHAL.—It is in evidence in that case.

Judge WINN.—I demand the production of it.

Mr. HELLENTHAL.—Mr. Robertson, the court reporter, is in Skagway. [1297]

Afternoon Session.

Continuation of cross-examination of Mr. HILL.
(By Mr. HELLENTHAL.)

Q. Mr. Hill, you remember testifying at the last hearing with reference to the map that has been offered in evidence that the length of the Colorado as scaled on that map was 1235 feet, don't you?

A. May I see the record? I should like to see it.

By the COURT.—You are referring to the former examination?

Mr. HELLENTHAL.—Yes, sir.

Q. The question is—you can read it in the record, the question and answer—

Question: How long does the Colorado scale

(Testimony of Lloyd G. Hill.)

on that map, Mr. Hill?

Answer: The Colorado scales on this map approximately 1235 feet.—

Did you so testify? A. Yes, sir; I think so.

Q. I hand you here a blue-print—look at it and see if that is the one used on the former trial?

A. Yes, sir, that is the map.

Q. That was used at the former trial?

A. Yes, sir.

Q. And that is the one with reference to which you testified? A. Yes, sir.

The map is marked Defendant's Exhibit No. 3 for Identification.

Q. At that time, then, you presumed the Colorado to be approximately 1235 feet?

A. Yes, sir, I showed it so on that map; I hadn't had time to [1298] figure the connection—I merely platted it and scaled it.

Q. You testified at the former hearing as follows, did you not, Mr. Hill, about that Colorado claim—this is a question asked by me:

Question: Mr. Hill, what is the size of it, what is the length of it?

Answer: The size of the Colorado, it seems to be, as it is on the ground, on the surface, seems to be about 1230—about 1237 or 1238 feet long. You testified to that, did you?

A. Yes, sir, I think I did.

Q. You were mistaken at that time as to the size of the Colorado?

A. I qualified that all through those statements by

(Testimony of Lloyd G. Hill.)

“about” and “approximately,” by “scaling”; there is nothing accurate about that within a few feet, you know.

Q. How long do you find it to be now on this map?

A. I find it, by figuring it out here, to be 1215 feet.

Q. It was necessary to slice off 15 or 20 feet in order to make it fit? A. No, sir.

Q. You didn't cut off any? A. No.

Q. That 15 or 20 feet or whatever it was, do you mean to say was a mere approximation and included in your “about”—is that it? A. Yes, sir.

Q. Now, the difference between the northerly side line of the Colorado as it is now located by you in length and the northerly line as located then is something a little less [1299] than 300 feet?

A. 259 feet, I think.

Q. The only thing you determined the northerly line by is the extension of the Lotta line, drawn from post 6 and 5 as located on the ground?

A. No, sir, that is not the only thing I determined it by.

Q. What is the other thing?

A. The other is by the angle turned from post 5-4 of the Lotta, also post of the Royal turning the proper angle,—that is an additional check.

Q. An additional check? A. Yes, sir.

Q. How about the angle you turned at post #5 of the Colorado—does that check?

A. The angle I turn at post No. 5 from what?

Q. That is the one that is off 8° is it not?

(Testimony of Lloyd G. Hill.)

A. Off 8° from the call as it is in the patent,—yes, sir, it is.

Q. Now, the mistake that was made in running the northerly line there as to distance, was made by your chainman—is that the way you want to be understood? A. It must have been; yes, sir.

Q. You couldn't have made the mistake yourself?

A. I could have, yes, sir.

Q. But you charge that up to the chainman?

A. Well, they chained the distance off.

Q. And they are off that distance? A. Yes.

Q. That was a mistake, was it not—that whole business—a mistake of some 300 feet?

A. There was a mistake made in the measurement of 259 feet at [1300] the time that survey was made.

Q. There was only a mistake of a little over 8° in the course? A. Yes, sir.

Q. Who made that mistake—you made that yourself, didn't you?

A. No, the course that I would arrive at was entirely dependent upon the distances—given the wrong distance I couldn't get the course I showed in the patent notice, because one is dependent upon the other.

Q. When you ran your course you set up your instrument, didn't you? A. Yes, sir.

Q. And you determine from sighting across your instrument or from your instrument the course you are running on? A. Yes, sir.

Q. You did that part of it? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. If a mistake was made in that, you made the mistake?

A. No—that is dependent upon the distance; the course given in the patent was not one single course that was laid out—that is the result of a traverse line which I run connecting one corner of the Colorado with the other corner.

Q. Didn't you make a mistake of 8° in that?

A. That mistake came through the computation of the length and course of that line.

Q. Who made that mistake, you or somebody else, that is what I am trying to get at?

A. The difference in the course is dependent on the length of the line that was measured on the ground.

Q. Somebody made a mistake, though?

A. Yes, the chainman made a mistake. [1301]

Q. The chainmen made all the mistakes?

A. Yes, sir.

Q. What is the width of the Colorado?

A. The width of the Colorado is 522 feet on the east end and 600 feet on the west end line.

Q. The notes give it as 600 feet on the east end, don't they?

A. No, I think not—if they do, there is an exclusion there, with the survey of the Nevada lode.

Q. Did you find that stake, that Nevada stake?

A. Yes, sir.

Q. Where is that located?

A. That is located up there above Snowslide Gulch.

Q. It is not located up here where it is shown on

(Testimony of Lloyd G. Hill.)

that map? A. Absolutely there.

Q. In that place?

A. Yes, sir, where it is shown on the map, marked stake No. 2 of the Colorado.

Q. Of the Nevada?

A. Stake No. 2 of the Colorado is the identical stake, with one of the official corners of the Nevada lode.

Q. That survey is correct then? A. Yes, sir.

Q. You are sure of that? A. I am.

(To follow the first omission on page 125 indicated by * * * on said page 125 of original transcript [printed record, page 272], being a continuation of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. You also assisted, Mr. Hill, in running the lines and setting [1302] the stakes of the Colorado, did you not? A. I did, yes, sir.

Q. I hand you here the commissioner's records, notice of location of the Colorado, page 95—look at that—that is the location that you surveyed?

Judge WINN.—We make the same objection—that this is not proper cross-examination.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, I did.

Q. You assisted Mr. Garside, or did you do that alone? A. We were up there together.

Q. Anyhow you helped do the surveying?

A. I wanted to qualify this survey—this surveying was very hurriedly done in this instance of the location and it was a preliminary survey.

(Testimony of Lloyd G. Hill.)

Q. The notes as given in that preliminary survey, however, are almost the same as your notes in your official survey of the Colorado, are they not?

A. Yes, sir.

Q. Almost the same? A. Almost.

Q. And would locate the Colorado just about as you locate it in your official survey, the courses and distances are approximately the same—is that true?

A. With the exception of a conflict existing at the southeast corner of the Colorado with the prior location of the Nevada.

Q. That is not in there?

A. No, that is not in there.

Q. But it is in the other?

A. It is in the other, yes, sir. [1303]

Q. You made the same mistake then in running that preliminary survey that you did in running the official survey, is that true? A. Yes, sir.

Q. The same identical mistake—I will offer this in evidence. We will offer a certified copy.

Judge WINN.—We make the same objection.

Objection overruled and exception allowed.

(Certified copy when received to be marked Defendant's Exhibit No. 5.)

Q. Now, Mr. Hill, in tying the Lotta, when you made both of those preliminary surveys, one for the Oregon and the other for the Colorado you knew all the time where stake No. 5 of the Lotta was?

A. I did; yes, sir.

Q. And if those things don't check they are merely mistakes, is that true? A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. Now, your line there of the Lotta measures 1526 feet, does it not? A. Yes, sir.

Q. That is 26 feet longer than the patent notice, is that true? A. Yes, sir.

Q. The ground between stake Number 5 and 6 is such that you wouldn't be apt to make a mistake about that?

A. Yes, sir, you can make a mistake very easy—it is very rough, very precipitous and one of the most difficult lines to measure there is in the country.

Q. How about the line between stake—from 3 to 5?

A. From 3 to 5 is pretty steep, the latter part of it—the last 150 feet is very steep. [1304]

Q. Still it is such a line that a man with a surveyor's paraphernalia hasn't any difficulty in running?

A. No, not much difficulty in running that line.

Q. Then, a man with a practical surveyor's instruments hasn't any difficulty in running the other line? A. Yes, a great deal of difficulty.

Q. How about the upper side line of the Lotta—is there any difficulty in running that?

A. Yes, there is more difficulty running that than the lower side line.

Q. How about the northerly end line—any difficulty in running that?

A. The northerly end line is a difficult line too, very difficult.

Q. But the southerly end line you can run considerably easier?

(Testimony of Lloyd G. Hill.)

A. Yes, that is not so difficult as the others.

Q. How long is your southerly end line there?

A. The southerly end line of the center lode stake is 144.9 feet.

Q. How much is the other?

A. And the other is 140.38.

Q. How much is the total? A. About 285 feet.

Q. About 15 short? A. It is, yes, sir.

Q. That country isn't so rough but what a surveyor can readily run that line—from your knowledge of surveying what would you say, how would it be with a man *that no* surveyor's instruments, merely had a pocket compass and a dressmaker's tape and it was run by moonlight—how would that be?

Objected to—sustained. [1305]

Q. Now, Mr. Hill, the creek you have delineated pretty accurately on your map here?

A. Tried to.

Q. In running a line, you suggested this morning, in surveying for patent, it is not necessary to run those things as accurately as you would under circumstances of this kind—isn't that true?

A. That question again.

Q. This morning you said in making a survey for patent, you wouldn't be as accurate in running the delineations and sinuosities of the creek through the claim as you would in preparing a map for a trial of this kind?

Judge WINN.—He never testified to that.

By the COURT.—His testimony was that he filled

(Testimony of Lloyd G. Hill.)

in the creek across the claim, as I understood it.

The WITNESS.—Yes, sir.

Q. That was the testimony? A. Yes, sir.

Q. You catch it where it intersects the lines?

A. Yes, sir.

Q. And fill in between the lines?

A. Yes, sir, sketch that in—take a course probably—from where you would intersect the creek with the line and then fill in and join your creek.

Q. In running from one stake to another, if you cross the creek when you get to the creek you measure that distance and when you run the other line, you measure the creek the same way—the part of where the creek strikes the claim, and comes out, and the other part is not so particular?

A. Not so particular. [1306]

Q. This plat is fairly accurate? A. I think so.

Q. What have you done now to delineate the creek on the ground?

A. I haven't done anything to delineate it upon the ground.

Q. What have you done about surveying it—what have you done on the ground in the way of surveying it?

A. I didn't pay a great deal of attention to the creek.

Q. Didn't pay much attention to it?

A. No; the corners I thought that were standing, were more important than the creek.

Q. So you didn't pay much attention to the creek. is that right? A. Yes, sir, that is correct.

(Testimony of Lloyd G. Hill.)

(To follow the second omission on page 125 of the original transcript [printed record, page 273] indicated by * * * being a continuation of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. (Repeated.) What else did you do there?

A. I regarded stake Number 2 and stake Number 1 on the northeast end line; I regarded stake Number 6 and stake No. 5 on the southwest side line. I regarded stake No. 4 and 3 on the southeast end line of the Lotta, and that plat is drawn in accordance with the survey of those stakes actually made on the ground.

Q. And it fits those stakes as actually made on the ground? A. I think so; yes, sir.

Q. But it doesn't fit either the courses or distances in either the plat in the surveyor general's office or the plat in the patent, the notes of the patent or the notes in the surveyor general's office, does it?

Objected to as repetition—objection sustained.
[1307]

(To follow the omission on page 130 of original transcript [printed record, page 278] indicated by * * * being part of the cross-examination of Mr. Hill by Mr. Hellenthal.)

Q. (Repeated.) Would you run the number of feet along the line indicated here on the ground, 1474.11 feet, according to the course given in the patent, and see if you arrive at the point given or indicated on this identification; just put naught there in pencil, will you, indicate it by a naught, by a round circle—see if you arrive there, will you—see if that is right.

(Testimony of Lloyd G. Hill.)

Objected to as not proper cross-examination.

Judge WINN.—If Mr. Hellenthal will indicate some object in this—

Mr. HELLENTHAL.—We are trying to locate the Lotta—that is the object.

A. Yes, sir, I should say that that line measures 1474 feet.

Q. That is according to the course given in the patent?

A. That is according to the distance as called for in the patent.

Q. Take this protractor and see if that course is correct as given in the patent?

A. Yes, I think that is correct as shown on here, provided that is the meridian—I guess it is.

Q. Now, Mr. Hill, you note there that the corner marked Corner Number 5 of the Colorado—that is the one you testified is identical with the Last Chance Placer corner, is it not? A. On my plan it is, yes.

Q. That is also identical with one of the Oregon corners, the notice of locating as locating the Oregon on the ground? A. Yes, sir, I think so.

Q. Now, I will ask you to assume that that corner is correctly [1308] platted and take that notice of location of the Oregon and determine whether the line of the Oregon claim running from that point, the side line of the Oregon starting from that point, is correctly delineated on this map?

Same objection as improper cross-examination.

Objection overruled. Plaintiff allowed an exception.

(Testimony of Lloyd G. Hill.)

A. I don't propose to start in and check up all those maps here against that drawing table and the lines of those plats and scale them off.

By the COURT.—If you wish to ask the witness questions of that kind you can submit them in writing or submit them over night, and unless he refuses to work for you he can answer them, but it is taking too much time to have these calculations worked out here in the courtroom.

Q. You don't think you can figure this out without taking a great deal of time?

A. I wouldn't want to; I don't want to identify another man's map I never saw except fifteen minutes ago.

Q. We will let you take this other map down—it has been marked for identification exhibit No. 6—and let you take it in your custody and under your control, if you will take good care of it, and the question now will be for you to determine between now and to-morrow morning if there is any possible way to put that Lotta parallelogram 300 feet wide and 1500 feet long, preserve the courses as given in the patent and the distances from the creek, assuming the creek to be properly delineated upon this map—if there is any possible way to lay that claim on the ground but the way it is laid there by the red line?

Judge WINN.—We object to the request made by counsel, in order [1309] to protect the witness while *he on* the witness-stand, etc.

By the COURT.—The question may be asked the witness; the matter of compelling him to answer will

(Testimony of Lloyd G. Hill.)

be taken up later.

The WITNESS.—What is that question?

Q. My question is, can you put the Lotta patented lode claim upon the ground or upon this map in any way other than the way it is here platted and indicated by the red lines, having regard for the creek, assuming that the creek is properly located upon this map, of which I speak, which is Defendant's Identification Number 6, assuming the creek is properly located and having regard for the courses and distances and ties given in the patent that has been produced in evidence?

A. I don't propose to try to do anything I can't that you request.

Q. Then, I will ask the Court to compel you to do it, right here now.

After argument—

By the COURT.—Is this the last one of this class of questions you are going to ask this witness?

Mr. HELLENTHAL.—Yes, sir.

By the COURT.—The Court will take a recess for ten minutes and if you can satisfy yourself so as to give a reasonably safe opinion in your judgment in that time you may do so.

After recess—

Q. Have you during the recess made an examination of this map exhibit No. 6 for Identification?

A. I have made a quick examination of it, yes, sir.

Judge WINN.—My objection goes to all these questions concerning [1310] this plat.

(Testimony of Lloyd G. Hill.)

By the COURT.—Yes, sir, and you are allowed your exception.

Q. In the examination you have made of it have you been able to locate the parallelogram 300 ft. by 1500 ft., observing the courses and distances given in the patent, with ties to Gold Creek as given in the patent, in any place other than the place in which it is here delineated, assuming of course that the creek is correctly platted?

A. I haven't been able to determine anything from the patent—there is no tie in the patent to Gold Creek.

Q. I am asking you, is there not a tie of 1200 feet and 40 feet, two ties, 1200 feet and 40 feet, to Gold Creek, in the little plat that is part of the patent?

A. According to the official field-notes the tie to the creek is given as one thousand feet on the south-westerly side line of the Lotta. According to the plat which is in the recording book here with the patent the course calls for 1200 feet, a difference of 200 feet.

Q. Well, now, we are going to pay no attention to the official field-notes in this question—I am asking you now about the patent, the tie being 1200 feet in one instance and 40 feet in the other—do you understand what I mean?

A. You are talking about the plat included with the patent?

Q. I am talking about the plat included with the patent, which is part of the patent?

A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Judge WINN.—There is no map with the patent—it is a drawing placed upon the record-book probably by the recorder—it is all full of mistakes and we will show that as soon as I get a chance to cross-examine Mr. Hill. We object to it. [1311]

By the COURT.—You were to furnish a certified copy of the patent of the Lotta, including that plat in the book.

Judge WINN.—Yes, sir, but they haven't got it up yet. Objection overruled. Plaintiff allowed an exception.

Q. I refer to the plat, so you will understand it, appearing on page 151 of this Book 7 of the Records of the Commissioner, in which it occurs as part of the patent to the Lotta claim. Now, calling your attention to the map I now hand you, marked for Identification Defendant's Exhibit No. 6—this is the plat that you have been examining during the recess given by the Court for that purpose—you have made an examination of it, Mr. Hill?

A. Yes, sir, I made a casual examination.

Q. Such an examination as you could make in the time given? A. Yes, sir.

Q. It was careful enough was it not?

A. It was careful as much as I went into it—of course, I could not go into it very much in that time.

Q. Assuming that the creek is correctly platted on that map—I will ask you if you can locate the parallelogram 300 feet wide and 1500 feet long at any place upon that map other than the place indicated by the red lines and preserve the courses given in the

(Testimony of Lloyd G. Hill.)

patent notes and the distances given in the patent notes and also the ties given in the plat which is included in the patent to Gold Creek, 40 feet in the one case on the upper line and 1200 feet on the lower line?

Judge WINN.—That is the red lines?

A. Well, I don't think I have had sufficient time to demonstrate whether I could or not. [1312]

Q. During the time you had, however, you have not been able to do it? A. I didn't attempt to.

Q. You didn't attempt to? A. No, sir.

Q. I thought you were going to take the time and attempt it and it was for that purpose we had a recess.

A. I was making an examination of other portions of the map and came to the conclusion that the map was wrong.

Q. The map is wrong? A. Yes, sir.

Q. What is wrong about it?

A. To some extent—the point marked Alaska-Juneau dam is not in the proper position.

Q. Well, now, in spite of the fact that the Court told you to make an examination of it in order that you might answer that question, you made no attempt to determine whether that question could be answered or not—is that true?

A. It was such a hypothetical question that I couldn't; in the first place I would have to presume that the creek had never changed its course since the time of the Lotta survey, twenty-three years ago.

(Testimony of Lloyd G. Hill.)

Q. All that I asked you to assume.

A. It was entirely hypothetical, the question and the answer.

Q. Altogether hypothetical?

A. I didn't succeed while I was out there in placing the parallelogram without changing the creek—I didn't work long there, however.

Q. Did you succeed in placing the parallelogram, assuming the creek to be correct and observing the notes and courses [1313] in the patent, in any other place except that red one?

A. No, sir.

Q. You did not? A. I did not.

Q. You were not able to, were you?

A. I was not able to in the time I had.

Q. Do you think you could do it if you had more time? A. Well, I wouldn't care to say.

Q. You have not been able to lay that parallelogram in any other place? A. No.

Q. And you refuse to take this map to your office to determine whether it can be placed elsewhere?

A. I don't care to, no.

Q. And you can't tell anything further about this map without taking it to your office, can you?

A. Yes, I can tell in regard to the black line.

Q. What about that?

A. Marked west side line of Lotta as claimed by the Ebner Company.

Q. What about that?

A. Well, I think that is the same line as that marked 5-6 of the Lotta on exhibit "N."

(Testimony of Lloyd G. Hill.)

Q. On your plat? A. Yes, sir.

Q. If that is the same line marked as line between 5 and 6 on the Lotta on exhibit "N," you would also say that the line on this identification 6, between Corner 2 and Corner 3 is the same, is it not, as on exhibit N'?"

A. I wouldn't care to say about that—I just care to define that [1314] one line, the southwest side line of the Lotta.

Q. That is approximately according to the course you gave in your exhibit "N" also, is it not?

A. Very close, yes, sir.

Q. (By Judge WINN.) Which line?

A. The southwest side line of the Lotta.

Q. Assuming that is correctly laid upon the ground, I will now ask you if the green line—well, never mind that—is there anything else you can testify to about that map without taking it to your office?

A. No, there is not anything I care to testify to.

Q. That line 5-6, however, that is as you claim it to be—that is all right?

A. I think so, approximately.

Q. The other lines you don't know anything about? A. No.

Q. And you don't care to take the map to your office to acquaint yourself with it so you can testify?

A. No, I do not.

Q. Have you ever seen Corner No. 2 of the Nevada?

(Testimony of Lloyd G. Hill.)

A. Yes, I think I saw that at the time I made the official survey of the Colorado lode.

Q. That is the only time you ever saw it?

A. No, I think I have seen it again, some time subsequent to that.

Q. Will you describe that corner?

A. No, sir, I can't describe it now—it was a stake 4x4 then, 4 inches square and about 4 feet long.

Q. A stake 4x4, 4 inches square, about 4 feet long?

A. Yes, sir.

Q. Was it a painted stake? [1315]

A. Yes, sir, I think so.

Q. Any legend on it?

A. The number of the survey and Corner 2.

Q. Indicating that it was a corner of the Nevada?

A. Yes, sir.

Q. Corner 2? A. Yes, sir.

Q. How was the stake set in the ground?

A. I think it was set in rock.

Q. You think it was set in rock—rocks piled around it? A. Yes, sir.

Q. Small rocks?

A. Ordinary rocks, some of them large and some small.

Q. Where was it set with reference to the cliff?

A. Well, I don't recollect the position of it.

Q. Any trees or anything there, witness trees or anything to indicate where that stake was?

A. No.

Q. No witness trees or any other witness marks in there?

(Testimony of Lloyd G. Hill.)

A. I didn't see any—I didn't make the Nevada survey—that was made by Mr. Alfred Williams.

Q. But when you made the Colorado survey, you of course checked with that stake, did you not—did you survey to that stake or did you just find it and plat it out afterwards?

A. No, I simply set my corner of the Colorado and sent in those notes, and I found there was a conflict between the Colorado and the Nevada and the plat was sent back, and I went up and made the amended survey, cutting out that little portion and also making the corner of the Nevada a corner, common corner of the Colorado, marked No. 2 on this map, and then followed along one of the side lines, I think—no, [1316] the end line of the Nevada and also established another corner up there, Corner No. 3 of the Colorado.

Q. And you are sure that the corner of the Nevada now that is there on the ground was on the ground at that time, was there, indicated by a post 4x4, three or four feet above the ground, painted white?

A. I think so, to the best of my recollection.

Q. You have never been up there since?

A. No.

Q. If the corner of the Nevada is indicated by a large rock and that large rock is appropriately marked and ties and witnessed by another inscription on a nearby rock, that is not the corner that you found?

Objected to as not proper cross-examination. Objection overruled. Plaintiff allowed an exception.

(Testimony of Lloyd G. Hill.)

Q. If the monument at the present time, Mr. Hill, on the ground, is a large rock, witnessed by an inscription on a nearby rock or bluff in the rocks, chiseled in so as to locate that corner definitely—that was not the corner that you found at the time you surveyed the Colorado and found a four-inch post there?

A. It was not, no, sir.

Q. And if you tied into a four-inch post and that is the corner—you didn't find the corner, is that it?

A. I didn't find the rock corner that you speak of, but I found a post marked Nevada at that time, the corner could have been changed and be in the same position—I don't know a thing about that.

Mr. HELLENTHAL.—That is all. [1317]

(By Judge WINN.)

Q. I don't remember, Mr. Hill, when you were examined directly before as to whether or not I called your attention to this exhibit "N" and asked you anything about these black dots with red circles around them, at various places and corners, etc., what is represented on that map as being mining claims. Now, I will call your attention to them and ask you what they are.

A. They are corners of various mining claims that were found standing and marked on the ground—some of them have the appearance of being very old and various surveys.

Q. Now, how long since has it been that you saw those particular corners, especially along the northerly end line of the Lotta, Take lode, Keystone,

(Testimony of Lloyd G. Hill.)

Crown Point and up to the Golden Fleece?

A. That particular set of corners I have seen from the spring of 1898 at intervals up to the present time, all of them.

Q. Now, Mr. Hill, I will ask you another question concerning something I went into *particllay* on direct examination and that is, taking the corner that is marked Number 2 of the Crown Point, which is described in the manner I have just indicated with a black dot and a red circle around it—that is the corner from which there is a call made and a tie made to the U. S. Monument No. 2 and is referred to in the patent papers in this case, is it not?

Mr. SHACKLEFORD. — Same objection as offered to this line of testimony before.

Judge WINN.—It is preliminary.

Objection overruled. Defendant allowed an exception.

A. It is, yes, sir.

Q. And your actual measurement found that how many feet, how [1318] many more feet, that is, longer than you determined by your actual measurement—that is the Garside tie?

Objected to as repetition—sustained.

Q. I believe you testified that the measurement as given by the field-notes and the patent of that tie to that U. S. Monument is longer than the one that you made by actual measurement?

Same objection.

By the COURT.—It is preliminary—objection

(Testimony of Lloyd G. Hill.)

overruled. Defendant excepts.

A. I did.

Q. Now, assuming that the line that is drawn from the Crown Point No. 2 corner stake down to the Corner No. 6 of the Lotta is a correct end line of those various claims which border upon it—I will ask you if the Garside measurement is the correct one, would it follow that you could tie up to these corners you found on the ground or would it throw the Monument No. 2—at what place?

Mr. SHACKLEFORD.—We make the objection heretofore made, that all reference to any corners except the corner of the Lotta is incompetent, irrelevant and immaterial for the reason that it appeals from the patent notes and from the field-notes that the Lotta was the first survey made and that all other claims were made by tie to the Lotta, therefore the Lotta is the key claim of the series.

Objection overruled. Defendant allowed an exception.

Q. I say if the distance that is given from the U. S. Monument down to the corner of the Crown Point is a correct distance, would it locate that corner of the Crown Point about where it is now and where the stake is found? [1319]

A. No, it would not—it would locate the corner of the Crown Point approximately 125 feet—

Q. In what direction?

A. In a northwesterly direction or down Gold Creek—it would have a tendency to throw that corner further down Gold Creek.

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant allowed an exception.

Q. Then, if that is true, the correct distance, these monuments you found on the ground would be out of joint?

A. Then, if their notes from Corner No. 2 of the Crown Point, if the call in the patent notes were taken, or the posts as they exist on the ground along that line that I have been able to find were followed, it would have a tendency to throw the whole group of claims included in Surveys No. 87, 88, 89, 90 and 91 approximately 70 feet in a northwesterly direction, making them conflict with the Forrest and the Etta and all those subsequent surveys bordering on the northwest end of the claims and also throw the entire group further down Gold Creek.

Q. Now, Mr. Hill, in the patent in this case, the patent to this bunch of claims, it appears that Mr. Garside in making these surveys used a magnetic variation of 30° east. I will ask you now, if you take the variation at which Mr. Garside made these surveys, assuming that to be the correct one, and then take his courses and distances and commence down here at Corner No. 6 of the Lotta claim, run up the side lines as indicated on this plat "N" as far as Corner No. 2, as to whether or not you would discover those stakes and run over the same line as Garside, in surveying for patents— [1320] Corner No. 2 of the Crown Point, I mean?

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant excepts.

A. It would be practically the same line Garside had; it might be off a little in regard to measurement or alignment, but you would find the stakes all right without any doubt, you would find the stakes.

Q. I understand you to say, in making your survey here, upon the data which you used in making this Plat "N," you used a different variation—what variation was that?

A. Well, we found the true variation to be 31-34—the variation around this section is increasing a little, the magnetic variation, from year to year and it is now 31-34 east of north.

Q. Now, I will ask you, taking Mr. Garside's magnetic variation of 30° as is indicated in the patent that covers this group of claims and commencing at any one of the monuments that you found upon the ground of the Lotta claim and which you have testified concerning and run those lines with that variation and turn the angles as indicated in the patent, whether or not that would give you the piece of ground that we are contending for as the Lotta claim or some other piece?

Objected to on the ground stated in the last objection and as leading. Objection overruled. Defendant allowed an exception.

A. Yes, sir, it would give you practically the same piece of ground, except a small excess that would

(Testimony of Lloyd G. Hill.)

have to be cast off—this claim is a little longer—26 feet.

Q. You were questioned at length by Mr. Hellen-thal in cross-examination from this drawing that is found in Book of [1321] Deeds No. 7 at page 151, and which is drawn upon a leaf and page of that book and is referred to in the patent to this group of claims—I will ask you if you have made any examination of that drawing since you were examined by Mr. Hellenthal? A. I have.

Q. Have you also compared that drawing with the certified copy of the official plat upon which the patent in this case is based and that is marked in this case as Plaintiff's Exhibit "B"?

A. I have; yes, sir.

Q. Now, without asking you particularly as to any defects or variances or differences that you found in them, I will ask you to state briefly to the Court what you have found regarding this drawn plat in the record book that I have referred to in this question.

Mr. SHACKLEFORD.—We object to any testimony varying the notes given in the plat, which is a part of the patent, etc.

By the COURT.—The certified copy of the plat in connection with the field-notes will be admitted, but it will be a matter of argument as to which is controlling. The objection will be overruled. Defendant allowed an exception.

(Testimony of Lloyd G. Hill.)

Q. Just answer the question.

A. In reference to the Lotta on the plat shown in the record, the creek is really platted out about 130 feet wide, Gold Creek. The call from Corner No. 5 to Gold Creek is 1200 feet, whereas on the certified copy of the plat attached to the field-notes the call is one thousand feet to Gold Creek. The northeast side line of the Lotta claim in the plat attached to the record gives a call of south 23-45 [1322] east and the same line on the adjoining claim gives the call of north 33-45 west, whereas the plat attached to the field-notes, certified plat, gives the call of north 33-45 so that the map within the record is contradictory to itself; it shows right up in the record—it is self-evident. The drawing itself is a drawing to a scale, is not authentic by any means—you couldn't determine anything from it.

Q. Take your ruler there and apply the scale to this map that is in the record book, drawn in the record, and see how far it would be from the two lower corners of the Lotta claim to the creek as it is sketched in there, and give which corner you are measuring from to the edge of the creek?

A. From Corner No. 5 in the southwest side of the Lotta it would be a distance of 1050 feet to the east side of Gold Creek.

Q. To the centre of the creek what would it be?

A. To the centre of Gold Creek the distance would be, as near as I can determine from scaling, 1115 feet.

(Testimony of Lloyd G. Hill.)

Q. What does it say in the book?

A. The book is marked 1200 feet.

Q. Now, Mr. Hill, I will ask you if in this certified copy of the plat upon which the patent to this group of claims is based and also in the plat that is incorporated in the record of the patent, I will ask you if the Ebner mill is referred to in the way of a tie and appears also upon each one of those plats?

Mr. SHACKLEFORD.—We make the same objection, that the description of the Lotta only ties to certain points and any ties to the other claims are subsidiary to the initial claim.

Objection overruled. Defendant allowed an exception. [1323]

A. The Ebner ten-stamp mill is shown on the certified plat of the surveyor general's, with the field-notes—it is also included within the field-notes.

Q. Where is that page that gives the call?

A. And it is also included in the patent to the claim lying to the northeast of the Lotta lode known as the Taku lode, Survey No. 88.

Q. It is referred to sometimes as the Taku Gold & Silver? A. Taku Gold & Silver.

Q. You have it on your Plat "N" marked Taku lode? A. Yes, sir, we didn't have room.

Q. Has there ever been, since you have been in this country, any mill upon this claim other than the mill that is there now?

Same objection. Objection overruled. Defendant excepts.

(Testimony of Lloyd G. Hill.)

A. No, sir.

Q. Now, I will ask you, taking that mill as one of the monuments and one of the ties that is made in running up this line from Corner 6—

By the COURT.—Better prove the dimensions of the mill.

Judge WINN.—He called it a ten-stamp mill.

By the COURT.—Is the call in the patent any particular part of the mill?

Judge WINN.—(Reading from the patent.) Beginning where a description of Lot No. 88, at a post marked No. 1 U. S. Survey 88 from which a ten-stamp mill bears south 49-30 east 140 feet distant, etc.

By the COURT.—The size of the mill then becomes important if there is nothing to show what part of the mill it was, if it is only 140 feet away.
[1324]

Judge WINN.—I will ask Mr. Ebner to go on the stand and give the dimensions of the mill, when I have completed Mr. Hill's examination.

Q. Now, Mr. Hill, taking this certified copy of the plat, the official plat which we have offered in evidence as our exhibit "B" and also with reference to the plat that is incorporated in the patent in the record book of deeds, No. 7, and apply the scale to those maps—I will ask you to locate approximately how far that mill is from Corner No. 2 of the Lotta which is common with Corner No. 6 of the Taku lode?

(Testimony of Lloyd G. Hill.)

Same objection. Objection overruled. Defendant excepts.

A. By scaling the distance from Corner No. 2 of the Lotta to the southeast corner of the stamp mill as it is shown on the certified plat in the surveyor general's office accompanying the field-notes, I make the distance to be approximately 470 feet.

Q. That is 470 feet from what corner?

A. That is corner No. 2 of the Lotta.

Q. How far would it be from Corner No. 6 of the Lotta—I asked you from Corner No. 2 of the Lotta or Corner No. 6 of the Taku Lode—that was my question? A. Yes, I answered that question.

Mr. SHACKLEFORD.—We move to strike the answer of the witness on the ground that there is no tie in the patent to Corner No. 2 of the Lotta.

Objection overruled. Defendant allowed an exception.

Q. Did you understand the other question? What would be the distance down to Corner No. 6 from Corner No. 2 of the Lotta? [1325]

A. I have answered that question, given the distance and everything, from Corner No. 2 of the Lotta.

Q. This corner here is No. 6 of what, the Taku lode?

A. No. 6 of the Taku lode, identical with No. 2 of the Lotta.

Q. Then from Corner No. 6 of the Lotta is what I want?

(Testimony of Lloyd G. Hill.)

Mr. SHACKLEFORD.—We object on the ground previously stated and on the further ground that there is no tie from that corner to the stamp-mill in the plat.

Objection overruled. Defendant allowed an exception.

A. The distance from Corner No. 6 of the Lotta to the southeast corner of the ten-stamp mill on the Taku Gold & Silver lode is 650 feet, from the certified map accompanying the field-notes from the surveyor general's office.

Q. I will ask you to scale it on our exhibit "N" and see from those same corners whether the distance is greater or less or the same, and give it?

By the COURT.—You are now cross-examining your own witness about his plat.

Judge WINN.—I want to show that our map is drawn placing these claims upon the ground just where they ought to be in the survey. We ask an exception to your Honor's ruling.

Exception allowed.

Q. From Corner No. 1 of the Taku to the mill, which is a tie given in the deed—I will ask you if you have made this map in respect to the same distances, etc., given in the official map and the one given in the deed?

Same objection. Objection sustained. Plaintiff excepts.

Q. There is a post marked No. 1 on the Taku lode

(Testimony of Lloyd G. Hill.)

—I want to ask Mr. Hill how far that is from the mill—that is one of the calls in the patent?

By the COURT.—You may enquire. [1326]

Mr. SHACKLEFORD.—We desire an exception. Exception allowed.

A. It is very close to the call given in the patent notes—the patent calls for 140 feet, and I make it about 120 feet or 125 feet—it is rather indefinite, the centre of the mill.

Q. At the time you made the survey for the Colorado lode claim for patent, I will ask you if at that time you knew of the existence of the Royal lode claim, Survey No. 238? A. I did.

Q. I believe that that was one of the Garside surveys that you assisted in making?

A. The Royal survey? No, I didn't assist in making it—that was made before I came to the country.

Q. Well, you knew, did you or did you not, of the boundary lines of the Royal lode?

A. I knew of the boundary lines and of the corners at that time of the Royal lode, yes, sir.

Q. You said in answer to a question that Mr. Helenthal propounded to you this morning about there being two systems of surveys and that the Corner No. 5 of the Colorado you tied to Corner No. 3 of the Last Chance property—what property do you refer to when you say the Last Chance property?

A. I refer to the Jualpa property, a placer property.

(Testimony of Lloyd G. Hill.)

Q. It is not represented on this exhibit "N"?

A. No, sir, it is not.

Q. Where did these claims lie with respect to the Corner No. 5 of the Colorado survey?

A. Those claims lie southeast and east of the Colorado survey, extending down Gold Creek.

Q. Extending down Gold Creek? [1327]

A. Yes, sir.

Q. Now, is that a set of claims that you refer to as being one system of claims?

A. Yes, sir, one survey. It is one survey consisting of a number of surveys, but it is all one system.

Q. Now, do you know as to whether or not those surveys or that survey is tied up with this U. S. monument No. 2 that the claims which we have a patent for, including the Lotta, are tied to?

A. Yes, it is.

Q. They are tied to what?

A. They are tied to the U. S. location monument in Silver Bow basin.

Mr. SHACKLEFORD.—We object to that on the ground that it refers to the tying of a different set of surveys—plaintiffs in this case are bound by the patent.

Objection overruled. Defendant allowed an exception.

Q. I will ask you whether or not you know whether this system of the Last Chance surveys were patented before or after the Colorado?

(Testimony of Lloyd G. Hill.)

Same objection and also as not the best evidence.

Objection overruled. Defendant allowed an exception.

A. The Last Chance system of surveys I think was patented in 1889; the Colorado was patented in 1904 or surveyed for patent, rather, in 1904.

Q. How does the Colorado claim lie with reference to the senior patents of the Last Chance and Royal lode?

Same objection; objection overruled. Defendant excepts.

A. The Colorado is between, lies between and is bounded on the east end by the Royal lode surveyed in 1891, the corners established, [1328] and is bounded on the west at one corner by Survey No. 142, surveyed in 1889.

Q. Now, I will ask you if you know where the corner posts of what is called the Millsite lode, Survey No. 383 and the Webster Millsite, Survey No. 76-B, are?

Objected to as not redirect.

Judge WINN.—I ask the privilege of asking the question.

By the COURT.—Is there a call in the patent to any corner of the millsite?

Judge WINN.—Yes, sir.

By the COURT.—You may enquire.

Q. I ask you if you know where any of those corner posts of those particular claims I have mentioned are?

(Testimony of Lloyd G. Hill.)

Mr. SHACKLEFORD.—We object on the ground that the notes and plat and patent are binding upon the plaintiff and they cannot locate it by reference to other surveys, and also on the ground that the Lotta is the key claim in the survey and ties made to other claims cannot affect the Lotta on the ground.

Objection overruled. Defendant allowed an exception.

A. Yes, sir, I am familiar with the corners marked in red here of the Webster Millsite and the Millsite lode; they are still standing upon the ground and are tied up with relation to the Lotta survey.

Q. I will ask you if you have examined the survey sufficiently well to tell how many ties there are made there, without looking over the survey?

Same objection, and leading; overruled. Defendant excepts.

A. There is one tie that ties the Taku claim and Corner No. 2 of the Webster Millsite, and both of these stakes are [1329] standing on the ground and are marked and the distances as given in the patent notes of the Taku, where the same distance and course is run out on the ground. I found the corners of the Webster Millsite all right; it was a prior survey to the Lotta or the Taku Gold & Silver—they fell in very closely, within a few feet.

(By Mr. HELLENTHAL.)

Q. Corner No. 1 of the Webster is not on the ground, the post?

A. The post No. 2 of the Webster is there, yes, sir.

(Testimony of Lloyd G. Hill.)

Q. No. 1, is that there?

A. No. 1 is there, yes, sir.

Q. In the ground? A. In the ground.

Q. Marked? A. Yes, sir, marked.

Q. How is it marked?

A. Well, it is pretty hard to tell just how it is marked; it is obliterated, but you can see it is marked and the position is right.

Q. The Millsite location was subsequent to the Lotta, was it not? A. Yes, sir.

Q. The mill on the Taku Gold & Silver has been enlarged during the last few years, has it not, the stamp-mill? A. Yes, I believe it was.

Q. This is not the mill that was there at the time this Lotta survey was made?

A. Well, it falls in practically the same position.

Witness excused. [1330]

[Testimony of F. J. Wettrick, for Plaintiff.]

Testimony of F. J. WETTRICK—Direct Examination of Mr. WETTRICK.

(By Judge WINN.)

(To following the omission on page 131 of the original transcript [printed record, page 278] indicated by * * * .)

Q. Have you ever had anything to do with the surveying of that claim or running out the lines?

A. Yes, sir.

(To follow the omission on page 132 of original transcript [printed record, page 280] as indicated by * * * .)

(Testimony of F. J. Wettrick.)

Q. (Repeated.) Now, I will ask you to state what if any corner posts, stakes or monuments you found upon any of the lines of the Lotta lode claim?

A. I found three posts on the southeasterly end line there, the southerly end line—two corner posts and one lode post; also one post on the other side of the road, northwesterly from the corner No. 5.

Q. Come over here and indicate on the map what they are numbered on this exhibit.

A. Starting with Post No. 5 of the Lotta—I find No. 4—

Q. What is Number 4?

A. Number 4 is the lode line post, the southeasterly end line, end of the lode line, marked by a post known as the lode line post. I find also post No. 3 of the Lotta and this witness corner No. 2 and stake by the road.

Q. What do you mean by witness corner?

A. A witness on the intersection of the Forrest end line and the Lotta side line—this was referred to.

Q. Did you see anything of a cabin near any one of these posts? [1331] A. Yes, sir.

Q. Which one?

A. There was a cabin near post Number 5 of the Lotta.

(To follow the omission indicated on page 136 of original transcript [printed record, page 284] by * * * being a continuation of the direct examination of Mr. Wettrick by Judge Winn.)

Q. I will ask you to state briefly to the Court and in your statement you may refer to this exhibit “N” and tell just what you did in making this survey and

(Testimony of F. J. Wettrick.)

what corner posts, stakes, etc., if any, you discovered? A. You ask about the Lotta?

Q. Yes.

A. I discovered corner post #3 of the Lotta, corner post No. 4 of the Lotta and corner post No. 5 of the Lotta, which are the three posts.

By the COURT.—Is Number 4 a corner post?

A. Number 4 is the lode line post; posts Number 3, 4 and 5 I found, which were the posts found on the southeasterly end line of the Lotta claim. I retraced, re-ran the southwesterly side line and found a post at the intersection of the Forrest end line and the Lotta side line; I found post No. 6 of the Lotta in place; I ran the end line, the northwesterly end line of the Lotta claim and found a post Number 1 of the Lotta, a post in that position, Number 1.

Q. Is that the lode line?

A. That is the lode line of the Lotta claim, that being the northwest centre end line, the end of the lode.

Q. Did you run any other lines of any other group of claims that was patented with the Lotta, which are indicated on [1332] this exhibit "N"?

A. Yes, sir.

Q. Just state to the Court what you did in that respect and what, if anything, you found in the way of monuments or corner posts.

A. Having found corner post No. 6 of the Lotta and post No. 1 as indicated here of the Lotta I re-ran the end lines of these two claims—

Mr. SHACKLEFORD.—You are speaking of the claims above the Lotta?

(Testimony of F. J. Wettrick.)

A. Yes, the Taku, Keystone, Crown Point—those three.

Mr. SHACKLEFORD.—We make the objection that the evidence is incompetent, irrelevant and immaterial, the reference to the location of any claims above the Lotta, for the reason that the Lotta is the first claim of the group, the key claim of the group and all other claims are tied to it.

Objection overruled. Defendant allowed an exception.

A. I found a post as indicated—Number 1—here on the end line of the Taku lode, at the intersection of the end line and the Webster Millsite. Continuing at the distances given in the patent notes I found post 2 of the Keystone lode, which is identical with No. 6 of the Crown Point lode in place; continuing that line according to the notes given in the patent field-notes the required distance I found post No. 2 designated here of the Crown Point in place. I also ran lines from this general line and according to the notes given in the patent field-notes and the plat and located Corner No. 2 of the Webster Millsite and Corner No. 4 of the Webster Millsite.

Q. You say in the patent notes—the patent notes are what you [1333] have reference to?

A. The notes of surveys Number 88, 89 and 90 and also 87 of the Lotta, also 76—B the Webster Millsite.

Q. In running this line I will ask you if you made any observations as to the mill which is referred to in the survey—they call it “lot” in the field-notes, Lot No. 88, which reads as follows: Beginning at the

(Testimony of F. J. Wettrick.)

description of Lot 88, at a post marked No. 1 U. S. Survey No. 88, from which a ten-stamp mill bears south $49^{\circ} 30'$ east 140 feet distant; thence has course north $56^{\circ} 15'$ east 127.85 feet to intersect the southwest boundary line of Lot No. 76-B at north 45° west 174.9 feet, from which post No. 1 of the said claim 300 feet to a post marked No. 2 U. S. Survey No. 88—I will ask you if you retraced any of the lines indicated by the courses and distances just read off to you, Survey No. 88?

Mr. SHACKLEFORD.—We object to that on the grounds last stated and on the further ground that the question refers to the Taku lode, No. 88 and Webster Millsite No. 76-B, the Taku lode being a subsequent survey to the Lotta survey and the Webster Millsite being an independent survey and on the further ground that if the Webster Millsite is a previous survey its position on the ground has nothing to do with the position of the Lotta, for the reason that the Webster Millsite, when patent was officially given, was in conflict with the group and so much of it as was in conflict was held out of the group.

By the COURT.—I hold that the Lotta and Crown Point are all one survey and the Millsite intersecting the boundaries of it and being marked at the points of intersection that the evidence may be admitted.
[1334]

Defendant allowed an exception.

A. I retraced enough of the lines and also re-located the mill on the ground.

(Testimony of F. J. Wettrick.)

Q. In making this location of the mill upon the ground, how did you find that location in relation to the field-notes and survey, etc., as are indicated in the patent to this property?

Same objection; objection overruled. Defendant excepts.

A. The location of the mill upon the ground is practically identical with the location of the mill as given upon the patent plat and in the patent field-notes.

By the COURT.—As located where?

A. As located from the corner of the Lotta, the Taku or any point along that line.

Mr. SHACKLEFORD.—I understand that the witness has just been answering the question as located from the point bearing off the Webster Mill-site?

The WITNESS.—No, sir.

Mr. SHACKLEFORD.—The notes will show that there is no location from the Lotta at all, except by inference.

The WITNESS.—By calculation.

Q. You have got through answering the question that the Court propounded to you? A. Yes, sir.

Q. Regarding this exhibit “N”—you have gone over this with Mr. Hill and investigated this map and plat and from your knowledge of these surveys, etc., I will ask you as to whether or not that map indicates the objects and lines, etc., as they exist upon the ground?

Objected to; objection sustained.

(Testimony of F. J. Wettrick.)

Q. What did you find about this map, whether it is a correct [1335] or incorrect map?

A. That map represents the location of the corner posts and the important monuments as they exist upon the ground as near as human agency can get them.

Q. You have examined the patent to this property and the courses and distances and monuments, etc., referred to therein, as well as the little plat that is drawn on the record as part of the patent, or as referred to in the patent at least? A. Yes, sir.

Q. Now, the variation that these lines were run was a magnetic variation of 30° by Mr. Garside—do your courses on this Plat “N” and the courses at which you run the various lines—was it run at such a variation, 30° or otherwise?

A. It was run upon a different variation.

Q. Why did you run it at a different variation?

A. Because the variation as given by Garside is not the variation found upon the ground to-day by an observation upon the sun.

Q. Do you run it from a true meridian or how? Explain to the Court how this was done.

A. In re-running the lines upon the ground as we have delineated them upon the map there an observation upon the sun was made, in order to determine the true meridian, and from such observation, having obtained the true meridian, it was found the magnetic variation is something larger than Garside used and we ran entirely independent of the needle; however, that does not make any difference.

(Testimony of F. J. Wettrick.)

Q. Who took the observation?

A. I don't know. [1336]

Q. You say you ran without the needle, you mean the magnetic needle—you don't necessarily need that in running your courses and distances?

A. Certainly not, the courses and distances are obtained by actual observation of the reflection angle.

By the COURT.—You started at No. 6?

A. Yes, sir.

Q. This greater variation that Garside allowed, if it did affect this plat, would twist it around on that axis of No. 6, would it, throw it to the right or left?

A. Yes, sir.

Q. With that difference of variation?

A. Yes, sir—it would throw it to the right.

Q. That would throw it down the creek?

A. Yes, sir—the difference in variation is a little over a degree and a half.

Q. Do these variations, that is the magnetic variation, remain the same from year to year or does it change? A. It changes slightly.

Q. What do you mean by magnetic variation?

A. That is the variation from the true north—that is the difference between the magnetic meridian and the true meridian, due to the change in position of the magnetic north pole.

Q. You know something about the instructions given to surveyors now, do you? A. I do.

Q. You are a deputy U. S. mineral surveyor and also a deputy land surveyor, under the laws of Alaska? A. Yes, sir. [1337]

(Testimony of F. J. Wettrick.)

Q. Are there any instructions about your using a magnetic needle in running courses and distances now? A. No, sir.

Q. You can use it if you want to?

A. No, you can't use it.

Q. Then, you run everything by the true meridian?

A. Certainly.

Q. You find that by taking the sun?

A. Yes, sir, certainly.

Q. And then, you have a formula you go through and find out your courses and distances, certain calculations and observation to determine the true north?

A. The reading of the needle is given in the field-notes, but this is merely to help out the prospector or anybody who wishes to relocate.

By the COURT.—It wouldn't affect a patent and survey that had been made when they did observe that regulation, would it, or when they did use the magnetic needle?

A. No, sir, that is merely a difference in the observation of the needle. Now, two instruments might not give the same reading, the instruments don't all read the same along the needle, and having determined the true north, it doesn't make any difference about the needle at all, the lines you retrace will be all the same.

Q. Do local surroundings have anything to do with the needle?

A. Yes, sir, certainly; occasionally you get near a magnetic rock or some steel in your pocket will re-

(Testimony of F. J. Wettrick.)

flect the needle so it doesn't record it accurately and moreover you don't read the needle any more than 15 minutes—the vernier on the needle is not very closely graduated.

Q. Now, I will ask you, if you will refer to the pages of the [1338] notes Garside made, upon which the patent in this case is based, and take into consideration of course his courses and distances and the magnetic variation he used and would go upon this ground and commence say at corner No. 6 of the Lotta and undertake to retrace the lines of this survey by using the data that you obtained from those field-notes—I will ask you if you could do so?

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial.

Objection overruled; defendant allowed an exception.

A. I could.

Q. Suppose you should take that data and take Mr. Garside's variation and take, of course, the monuments you find on the ground that you have testified concerning, I will ask you whether or not the survey actually made upon the ground would vary any from the survey as indicated in the patent?

Mr. HELLENTHAL.—We renew our objection and further upon the ground that Garside as the agent of these parties—they are bound by what he did and if he made any mistakes, it is their mistakes and on the further ground that he is including data that is not in evidence at all.

(Testimony of F. J. Wettrick.)

Objection overruled; defendant allowed an exception.

A. It would vary slight as to courses and distances, vary slight, very slightly.

Q. How about the ground actually contained in such survey in comparison to that that is in the patent or as described in the field-notes of the survey made by Garside, would it be the same ground or otherwise? A. The ground would be the same.

Q. You have examined as you have stated the patent to this [1338½] property and also the little plat that is referred to in the plat and as found at page 151 of the records of Book 7 of Deeds and also the paper which has been introduced in evidence in this case as Plaintiff's Exhibit "B" and referred to as the official plat and map of the survey in question and the particular property in question. Now, I will ask you if in the examination of these and comparison of them that you have found, that they correspond or there is any difference?

Mr. SHACKLEFORD.—We object to any testimony with reference to the difference between the plat attached to the patent and referred to in the patent, incorporated and made a part of the patent and preliminary field-notes of the surveyor general's office, filed at the time the survey was made, some time before the issuance of the patent; and we further object to it on the ground that the plaintiff in this case is attacking his own title and his own exhibit, and we give notice that we demand the production of the patent or a certified copy of it from the land

(Testimony of F. J. Wettrick.)

office before any further attack is made upon the verity of the patent as offered in evidence by the plaintiff.

Judge WINN.—I will state in reply to the demand of counsel to produce the original patent—if we can find it we will produce it; Mr. Ebner has already testified he didn't think he could produce it.

After argument the objection was overruled.

Mr. SHACKLEFORD.—I ask that the record show that we object to the testimony on the ground that it is incompetent, irrelevant and immaterial, and for the reasons stated in the former objections, and that all the proceedings in the land office are merged in the patent and the parties are bound [1339] by the patent.

Objection overruled. Defendant allowed an exception.

A. I have examined it, yes, sir.

Q. Now, I wish you would take the official survey, the certified copy of which you have, upon which this property is patented—I wish you would take this certified copy you have and compare it with the one drawn upon page 151 of the records and referred to in the patent and see whether or not there is any difference, or whether or not they are the same?

Same objection; overruled; defendant excepts.

A. I have already compared it and find a variance between courses and distances and a variance between the location of the creek.

By the COURT.—A variance between the courses and distances in the plat or that called for in the

(Testimony of F. J. Wettrick.)

recorded patent?

A. I mean there is a difference between the courses and distances upon that plat in Book 7 of the records, a difference with those given on the certified copy—they are not the same.

Q. But I will ask you if you have compared the body of the patent to see whether the courses and distances are the same as that in the certified copy of the plat that we have offered in evidence?

A. I have compared it but they are not all the same.

Q. The courses and distances are not all the same as they are on the certified copy? A. No, sir.

Judge WINN.—The certified copy I refer to is the certified copy from the surveyor general's office and is marked Plaintiff's Exhibit "B." [1340]

Q. If you will, explain to the Court just what you did see—whether it makes any material change in it?

. Same objection; overruled; exception.

Q. I find here that the course of the northeasterly side line of the Lotta claim is designated in the drawing in that book as south 23—45 east; in the certified copy from the surveyor general's office, Plaintiff's Exhibit "B," it gives the course as south 33—45 east for the same line, making a difference of 10°—that is to say that the course as given in the drawing attached to the book is in error ten degrees if the certified copy from the surveyor-general's office is correct; and furthermore I find that the parallel line to that one, which is in error 10°, the southwesterly

(Testimony of F. J. Wettrick.)

side line of the Lotta, is given as south 33-45 east in accordance with the description in the certified copy from the surveyor general's office, showing that the error is in copying.

By the COURT.—Then there is no conflict as regards this line that one side claims the dam is inside and the other side claims it is out?

A. The dam is not shown.

By the COURT.—It is the southwest side line that is claimed to run across the dam?

A. Yes, sir.

Q. (By the COURT.) They are both 33-45 as regards that line?

A. The courses are identical, yes, in both.

Q. You are a deputy U. S. Mineral surveyor—I will ask you if you are acquainted with the instructions of that office pertaining to errors in surveys and how and when they are corrected? Answer that yes or no. [1341] A. Yes.

Q. In case there is any error discovered either in the field-notes, courses and distances, or in the plat that is attached to your field-notes or the plat upon which patent application is made, how are those errors corrected?

Objected to as not the best evidence.

By the COURT.—That practically is embodied in written regulations?

The WITNESS.—Yes, sir.

Objection sustained.

Q. You say there are written instructions pertaining to that? A. Yes, sir.

(Testimony of F. J. Wettrick.)

Q. I will ask you if you know it to be a rule that deputy U. S. mineral surveyors are furnished with these copies and requested to follow them out?

Same objection; sustained.

Q. Have those regulations been substantially the same for the last twenty-five years?

A. No, they are different from year to year.

Q. Mr. Hill I think testified when he was on the witness-stand that he assisted you in running out and measuring up the call or tie that is made in the field-notes that govern the patent in this case from Corner No. 2 of the Crown Point lode, Survey No. 90, to U. S. Government monument up the creek there called U. S. Monument No. 2 I believe—I will ask you if you are the same Wettrick he referred to that he assisted in making that run of that line?

A. I think so.

Q. Just tell the Court if you found the courses and distances there the same as indicated in the field-notes and plat or— [1342]

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial, there being no tie to the Lotta which is the original survey, the key claim of the group and locates all the other claims.

Objection overruled. Defendant allowed an exception.

Q. State to the Court what you found.

A. I found that the courses and distances from the U. S. Mineral monument No. 2 to which the Crown Point is tied upon the ground is different from that given in the field-notes and returns of Mr. Garside

(Testimony of F. J. Wettrick.)

in the official survey of those claims different in course and in distance.

Q. What is the difference, do you know?

Same objection; overruled. Defendant excepts.

A. Yes, sir, the difference in the course to Corner No. 2 of the Crown Point to the U. S. Mineral Monument is some 27 minutes. The distance in chain or distance upon the ground is 125 and a fraction feet.

By the COURT.—Do you find it more or less?

A. I find it less. The black figures are the figures as I find them and the red ones as given by Garside. I find the distance 6405.7 and Garside found it 6530.6 feet.

Q. (By the COURT.) The difference in variation, do you find it throwing the corner of the Crown Point south or north from what he called it? The difference in the course from the mineral monument to your corner of the Crown Point as you find it upon the ground, would it throw that corner south or north of the line he established?

A. It throws it slightly to the south.

Q. (By the COURT.) All of which might be explained by turning the group on an axis at the southwest corner of the Lotta? [1343]

A. On the corner No. 2 of the Lotta? Yes, that would remedy the difference, yes.

Q. Well now providing you have established the end line of the Crown Point, Keystone, Taku and Lotta the northwesterly one and providing this creek is established on the ground and then taking into consideration this difference that you find in the run-

(Testimony of F. J. Wettrick.)

ning from point No. 2 of the Crown Point to this U. S. Monument providing that end line should remain the same—now would the difference between yours and Garsides have a tendency to throw these claims up or down the creek?

Same objection; objection overruled; defendant excepts.

A. It would throw it down the creek as shown by the difference in the distance.

Q. What did I understand you to say in answer to the Court's question?

A. If I understood the Court's question properly, he asked whether or not the difference in the bearing and distance I found there wouldn't throw the group of claims down the creek, which is the same as turning upon an axis providing the corner at No. 5 remains the same, throwing it around; that would necessarily be the case because if you lengthen those distances you shove these down the creek—assuming that corner No. 5 is taken as the axis, it would throw it down.

Q. Now, if Garside's measurement is correct and his course is correct, about where would it throw corner No. 2 of the Crown Point, from which the call is made to this U. S. Monument?

Same objection; objection overruled. Defendant excepts. [1344]

A. It would throw it down creek about 70 feet.

Q. Would that throw all the claims down the creek?

A. Certainly, because they are all tied together.

(Testimony of F. J. Wettrick.)

Q. Taking the course and distance as correct as described by you and Mr. Hill what effect does that have upon this group of claims, if any, as to their location upon the ground—does it change them from the patent any at all?

A. You ask what effect it has upon the location?

Q. Yes.

A. It has no effect upon the location at all—it simply shows how it is upon the ground with the corner stakes and with reference to the monument.

Q. I have forgotten whether you had anything to do with ever making a tie from what Mr. Hill testified is an open cut or tunnel—

A. Tunnel.

Q. (Continuing.)—on the Royal lode claim, made to one of the corners of the Lotta—do you know anything about that?

A. Yes, sir.

Q. Just state to the Court what you know about it.

Mr. SHACKLEFORD.—We object to it because it is a tie to another claim in controversy, which is the key claim.

Objection overruled. Defendant allowed an exception.

A. Having found Corner No. 3 of the Lotta and back-sighted corner No. 5 of the Lotta, the end line of the Lotta claim, I ran a line to the tunnel as shown upon the plat, the tunnel on the Royal lode and found that it is 122 feet, if I remember correctly the distance, I find upon the ground, whereas here it is 132—there is some 10 feet difference in the tie. [1345]

(Testimony of F. J. Wettrick.)

Q. You have no means of knowing when Garside made that call as to what part of this tunnel he made the call to or from, do you? A. No.

Q. What is the size of that tunnel, do you remember, approximately?

A. I believe it is 5x7; I don't remember exactly—some 30 feet long.

Q. Has there ever been a slide there so as to in any wise efface it?

A. Yes; the face of the tunnel has caved in—it is an old tunnel and has caved in a little.

Q. Can you tell whether there was an open cut before the mouth of the tunnel was reached?

A. Yes; the tunnel starts in on the ground where the angle is about 35°, so that the point where you commence to break ground is some 10 or 15 feet further down the hill from the point at which you get under cover, which some might call the beginning of the tunnel, and others may say the point where you break ground is the beginning of the tunnel.

Q. Providing you took one point as the point of the call and Garside took another, would that account for any differences you found in the distance?

A. Certainly; that would account for the difference.

Q. How is the ground, the topography of the ground, where this corner post No. 3 of the Lotta is—the one to which this call is made to this tunnel?

A. It is on a fairly steep sidehill, an angle of probably 25 or 30° from the line.

Q. What is the topography—describe it briefly—

(Testimony of F. J. Wettrick.)

of the Lotta, [1346] lode claim and especially the southeasterly end of the Lotta lode claim, after it crosses the creek?

A. The southeasterly end of the Lotta is found upon a fairly steep sidehill, the end line of the Lotta going straight up over the hill. The average angle, the ravine, is about 25° , 25 to 30° on the end line of the Lotta. The incline would be from corner No. 5 and 3.

Q. How is the topography in and about where the corner post of the Lotta No. 5 corner post is?

A. That is comparatively level.

Q. Did I ask you whether or not you saw an old house anywhere near corner post No. 5 of the Lotta, an old cabin?

A. I have testified I have seen that house; yes.

Q. Have you any call from any part of the Lotta survey, when you were making this survey, to that old house and found out where it is located with respect to corner No. 5 of the Lotta? A. Yes, sir.

Q. I wish you would explain that.

A. It is shown on the plat as I found it by course north $5^{\circ} 7'$ east 96.2 feet distance.

Q. (By the COURT.) That would be on the Lotta.

A. Yes, that would be on the Lotta.

Q. Now, I ask you if in surveying a piece of ground, either mineral or agricultural, if surveyors ever consider that when they are running on a particular course and distance, that they mention at a certain distance from a certain corner they cross the creek, or they cross a gully or they strike a building

(Testimony of F. J. Wettrick.)

—I will ask you if that is considered a tie of that mining claim. [1347]

Objected to as incompetent, irrelevant and immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you to define what a tie of a particular mining claim means, to any particular monument?

Same objection. Objection sustained. Plaintiff excepts.

Q. I will ask you if there is anything in the rules and regulations furnished you, to govern you in surveying, defining how a mining claim is to be tied up in a survey.

Objected to as not the best evidence. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you, as a surveyor, you consider that when you are running from some given corner post of a mining claim and running out on the side lines, in making a note in your field-notes at a certain distance you cross a field or gully, that that is considered a tie of the mining claim such as is required by the rules and regulations?

Same objection. Objection sustained. Plaintiff excepts.

Q. I will cut out "such as is required by the rules and regulations," and just ask him if he as a surveyor would consider that as a tie.

Same objection. Objection sustained. Plaintiff allowed an exception.

Judge WINN.—That is all.

(Testimony of F. J. Wettrick.)

Cross-examination of Mr. WETTRICK. .

(By Mr. HELLENTHAL.)

(To follow the first omission on page 137 of the original transcript [printed record, page 284] as indicated by * * * .)

Q. Now, Mr. Wettrick, you have been examining the notes in that patent. Look at that chart again.

[1348] A. You refer to this plat here?

Q. Yes; that little plat in the patent notes, in the patent itself? A. In the record?

Q. Yes—you find one course there 23-45?

A. Yes, sir.

Q. That is wrong, you say?

A. Yes, I believe it is.

Q. And on the same line you find the correct course—that is, it is 33-45?

A. On the other claim?

Q. Yes, on the other claim? A. Yes, sir.

Q. That is right? A. On the other claim.

Q. That is a mistake in putting down a “2” where the recorder should have used “3”? A. Yes, sir.

Q. And that is all that is the matter with that plat in that regard,—it is a mere error in getting a wrong figure there? Anybody can see that, can’t they?

A. That is what that is, an error in the figures, putting the figures down.

Q. What did you say about running those lines on the ground? Do you tell me that there was any way that you could run the line from corner 5 to 6 according to the course given in the patent notes and arrive at corner No. 6, when you start from corner 5—of

(Testimony of F. J. Wettrick.)

the Lotta I am speaking now—when I say corners, I mean the posts as found in the ground—you found 5 and 6? [1349] A. Yes, sir.

Q. When did you first find 6? A. Last year.

Q. You had found it when you testified last fall?

A. Yes, sir.

Q. At that time you ran from the Forrest stakes on No. 5?

A. From Forrest stake No. 1, you mean?

Q. What you claim to be the side line of the Lotta, the witness stake?

A. Yes, I ran that altogether—I picked up my line from Corner No. 6 to No. 1 and picked up my line at No. 2.

Q. Sometimes you ran one way and sometimes another?

A. Yes; you have to adjust yourself to the topography of the ground.

Q. In running that southerly side line of the Lotta you sometimes ran out from one stake and sometimes from another—is that true?

A. I ran that all through first from the corner No. 5 of the Lotta.

Q. And you ran that according to those stakes that you found on the ground last fall, the same stakes that are now there— isn't that true?

A. That is the way I ran last year; yes, sir.

Q. What is the course you took in running that line?

A. From the observation the course I found—

Q. What is the actual course you found between

(Testimony of F. J. Wettrick.)

those stakes—the course you ran on?

A. The course on the plat north 31–36 west.

Q. What is the course given in the patent?

A. North 33–45.

Q. Then the course you ran is different from the course given [1350] in the patent by something over 2°—is that not true?

A. There is a difference in the course of something like 2°.

Q. If you start at corner No. 6 and used the course given in the patent and ran 1500 feet, you will land several feet above corner No. 5, won't you?

A. If I take south 33–45 east, yes.

Q. If you take that course you will land several feet above 5.

A. If I start out on that course; yes.

Q. You will throw the claim several feet up the hill running on that course from No. 6? A. Yes.

Q. What is the course with reference to the end lines given in the patent? A. South 56–15 west.

Q. Does that fit with the course you ran in running from the end line of the Lotta on the stakes?

A. No.

Q. How many degrees difference?

A. About the same difference.

Q. Then, your end line was not given on your plat as run by you between the stakes, a difference of some 2° in course from the course given in the patent for that same line? A. Yes, sir.

Q. As to distance, how does it compare, the distances as they occur upon the ground?

(Testimony of F. J. Wettrick.)

A. The distances as they occur upon the ground to-day are slightly less than given and called for in the patent notes.

Q. (By the COURT.) On the end line?

A. Yes, sir.

Q. What is the distance between stake No. 2 and 6 as you find them on the ground there and as you have delineated them [1351] on exhibit "N"?

A. 2 and 6? 2 of the Lotta, you mean?

Q. Yes.

A. No. 2 of the Lotta is not in place.

Q. Suppose you ran from the point where No. 2 is on your plat—on your plat what is the length of the end line?

A. The length of the end line is 290.9 feet, I believe—that distance is not given on the plat, because Corner No. 2 is not in place, so that manifestly you couldn't connect that point—there is nothing there to connect to.

Q. What is the difference between 1 and 6 as you fit them on the ground? A. 140.9 feet.

Q. What is the distance between those two posts on the patent? A. 150.

Q. You are about ten feet shy on distance?

A. 9.1 feet.

Q. The other post is not on the ground and you add 150 feet for that?

A. That is what the patent calls for.

Q. You follow the patent in that regard?

A. Certainly.

(Testimony of F. J. Wettrick.)

Q. In the other one you pay no attention to the patent?

A. Certainly; I follow the patent stakes.

Q. You followed the stakes you found on the ground? A. Yes, sir.

Q. You have never seen those stakes except a year or two ago was the first time you saw them?

A. Yes, sir.

Q. And it has been a good many years since the patent was issued? [1352] A. Yes, sir.

Q. You didn't see when they were put there?

A. Yes, sir.

Q. You mean you followed the stakes you found on the ground at this time? A. Yes, sir.

Q. You don't mean to say that those are the original stakes put there at the time the patent was issued?

A. If you don't want to call them patent stakes, I will call them something else—call them stakes on the ground.

Q. The stakes on the ground as you found them on that end line down the creek—that line you ran between the stakes on the ground, between 1 and 6, don't agree within 2° with the notes called for in the patent as to course? A. No.

Q. Nor do they agree within ten feet as to distance—the distance of 150 feet? A. That is right.

Q. As to the other course you plat on your plat, Exhibit "N," from stake 1 to 2, that is merely an arbitrary course and an arbitrary distance you put there, following the patent notes of 150 feet?

(Testimony of F. J. Wettrick.)

A. Certainly.

Q. The only reason that your exhibit "N" agrees with the patent as to distance in that regard is because you follow the patent? A. Certainly.

Q. There is no stake there? A. No.

Q. The course, however, that you assume is an extension of the [1353] course that you have between 6 and 1—is that true? A. That is true.

Q. That throws that course off also 2° as compared with the course in the patent?

A. That is right?

Q. The line from 2 to 3 of the Lotta—is there a stake where you have staked No. 3 of the Lotta?

A. Yes.

Q. There is a stake there? A. Yes.

Q. You turn at right angles when you get to what you call No. 2, where there is no stake, you turn at right angles and run to stake No. 3—is that the way of it? A. No, that is not the way of it.

Q. You don't turn at right angles? A. No.

Q. How do you turn?

A. I told you Number 3 is out.

Q. Number 2 is out? A. Yes, sir.

Q. There is a stake where you put No. 3?

A. Yes, that is right.

Q. At No. 2 didn't you turn at right angles?

A. Number 2, I said, was out.

Q. But at that corner where that No. 2 should be, did you turn at right angles? A. No.

Q. How much do you differ from turning at a right angle? A. I don't turn any angle there.

(Testimony of F. J. Wettrick.)

Q. How does it appear on your plat—does it appear at right angles? [1354]

A. It is at right angles there; yes, sir.

Q. Now, the course from Corner No. 2 to 3 is what course?

A. That is a course from the lower side line, 33-45.

Q. Now, assuming the course you ran on—south 33-45 east—is that the course given? A. Yes, sir.

Q. You actually run one of the side lines on the patent course? A. No.

Q. What is the course, then, that you run that side line on? A. You mean the northeast side line?

Q. Yes.

A. I said I didn't run that side line.

Q. Didn't run it at all? A. Yes, sir.

Q. Just put it in?

A. Connected it at two points.

Q. Platted it in—didn't run it at all?

A. Certainly not.

Q. What is the course of that side line as it lays on your plat?

A. That course is south 31-36 east.

Q. You just put that down there to make it parallel with the one you did run? A. Certainly.

Q. When you get to Corner No. 3 you have some more stakes there in the ground? A. Yes, sir.

Q. What is the distance between Corner No. 3 and 4 given in your plat? A. 140.38 feet, [1355]

Q. What is the distance in the patent?

(Testimony of F. J. Wettrick.)

A. 150 feet.

Q. You are off about 10 feet there on distance?

A. Yes, sir.

Q. What is the course you are on?

A. I run on north 57-53 east.

Q. The difference between your course that you run there and the course in the patent is about 2°?

A. About 2° difference.

Q. A little over 2°, is it not?

A. The difference between 56 and 58—about 2°.

Q. 2° and 2'—that is the same, the same difference occurs when you run the line between 4 and 5, the same difference in degrees?

A. Substantially the same difference.

Q. What is the difference in the distance—what is the distance you find between 4 and 5 stakes?

A. 144.9.

Q. A little over 5 feet off there on distance?

A. 5.1 feet.

Q. You then don't agree within 5.1 feet on that course with the patent notes—is that not right?

A. Yes, sir.

Q. In running from Corner No. 5 to the creek, how many feet have you got?

A. Corner No. 5? 693 feet, I believe, to the centre.

Q. How many feet are given in the patent plat? I am talking about the plat in the book first, part of the patent offered in evidence, that small plat?

A. It is 1200 feet. [1356]

Q. A discrepancy there of a few feet?

(Testimony of F. J. Wettrick.)

A. Yes, sir.

Q. How many feet? A. About 300 feet.

Q. It is more than that, is it not?

A. Yes, about 500 feet difference.

Q. Your No. 2 as you have it platted on this map is in the centre of the creek?

A. As it is platted there it is in the centre of the creek.

Q. How far is that corner from the creek as platted in that other plat in the patent notes?

A. About—40 feet, I believe.

Q. A difference of 40 feet in that regard?

A. No, it is 50 here—it is hard to make out what it is.

Q. A difference of 50 feet, then, in that regard?

A. Yes.

Q. With reference to this plat of the surveyor general's office which has been offered in evidence, where does that southerly side line cross the creek?

A. At one thousand feet.

Q. How much does your plat No. "N" differ from that plat in that regard?

A. 300 feet—a little over.

Q. What is the distance between stake No. 2 and the creek on the exhibit from the surveyor general's office? A. 50 feet.

Q. You, then, also differ from that exhibit to the extent of 50 feet in your survey? A. Yes, sir.

Q. The courses given in the plat from the surveyor general's [1357] office are identical with the courses given in the patent—are they not?

(Testimony of F. J. Wettrick.)

A. You mean the courses given in that?

Q. Yes. A. No, they are not.

Q. The courses given in the patent notes offered in evidence, the notes to the patent? I am speaking now of the notes in the patent itself.

Judge WINN.—The same as in what plat?

Q. The Lotta claim—the plat that is offered in evidence as the official plat of the surveyor general's office—exhibit “B”—the courses given there are identical with the courses given in the field-notes that are copied in the patent to the Lotta claim—is that not true?

A. As far as I have examined them they are; yes.

Q. And the distances are the same?

A. As far as I know.

Q. Then your exhibit “N” differs from the plat of the surveyor general's office in regard to courses and distances to the same extent it differs from the patent—is that not true?

A. I don't know what you mean by the patent.

Q. The field-notes given in the patent that is offered in evidence, the patent to the Lotta?

A. Yes, sir.

Q. The same discrepancy—is that not true?

A. As far as I have examined them; yes.

Q. The difference between the courses given in your exhibit “N” or the difference given in the exhibit “N” and the course given in the plat offered in evidence—exhibit “B”—is something over 2°—is that not true? [1358] A. That is true.

Q. The stakes as found upon the ground within

(Testimony of F. J. Wettrick.)

the survey made of the Lotta, the stakes now found upon the ground, throws the courses some 2° off from what they would be if platted in accordance with the plat of the surveyor general's office?

A. Yes, sir.

Q. And the distance as found between stake 5 and 6 is off 26 feet according to your survey as compared with the survey of the surveyor general's office?

A. That is true.

Q. And the distance between 1 and 6 is off something over 5 feet—is that not true?

A. 15 feet, is it not? It would be the same.

Q. Both of the end lines as you found them upon the ground measured by the stakes are 15 feet short, approximately? A. Yes, sir.

Q. As compared with the plat from the surveyor general's office? A. Yes, sir.

Q. And as to the measurement of the creek, you are 300 feet off on the southerly side?

Objected to as repetition. Sustained.

Q. Now, I will ask you to take that plat from the surveyor general's office and patent and examine it and find anything, any one point—I don't care what it is—wherein the Lotta as platted by you on exhibit "N" and the Lotta as platted in the surveyor general's office, or the notes of the patent—I will give you a broad scope, where these plats agree in one point, call my attention to it.

A. You mean the plat given as exhibit "N" compared with the notes as given in the official record?

(Testimony of F. J. Wettrick.)

Q. Yes—find any one point there as to courses and distances? A. It will take some time.

Q. You can't offhand state any one point in which they agree?

A. No, sir; I haven't read only a quarter of a page of that record there.

Q. You paid no attention to any of these notes except the few stakes you found on the ground in making the survey, any of the notes or field-notes or patent, in determining the existence of the Lotta claim—is that not true?

A. No; that is not true.

Q. Did you read those notes before you made the survey? A. I read the official notes—

Q. Then, can't you answer my question?

A. As given in the surveyor general's office, but I didn't read those you want me to compare now. I am not testifying that those are copied correctly.

Q. Copied correctly from the original patent?

A. Yes, sir.

Q. You have to assume that I am asking you to compare with the notes as copied in this book, without any reference to the original patent—if that is produced later, we may have to modify it.

A. I have not read those over.

Q. But you have read the notes of the surveyor general's office? A. Yes, sir.

Q. Can you answer my question with reference to this? Can you point out to the Court one single place, one single course or distance or anything else, upon your exhibit "N" that agrees with the plat

(Testimony of F. J. Wettrick.)

or field-notes of the surveyor general's office?
[1360]

A. Not exactly, no; I don't think any of it agrees exactly.

Q. None of it agrees exactly?

A. No, I believe not.

Q. You ran the line from the mineral monument to a stake in the Crown Point? A. I did.

Q. And how many degrees was Mr. Garside off in that regard? A. Slightly.

Q. Is that stake in the Crown Point in place?

A. Yes, sir.

Q. Is there a stake there? A. Yes, sir.

Q. When you say to the corner of the Crown Point, you mean you ran a line from the mineral monument to a stake where you supposed the corner ought to be? A. Yes, sir.

Q. And you tied up a stake you there found on the ground with the mineral monument?

A. Yes, sir.

Q. But you have no knowledge whether that is the original patent stake of the Crown Point—you never saw that before, until two or three years ago?

A. I have no knowledge such as would be gained, such as having been there when the survey was made.

Q. You have a belief upon the subject but not knowledge? A. A strong belief; yes, sir.

Q. Which of these stakes along the end lines are in place here—what stakes did you find there?

A. Those marked in red upon the plat.

(Testimony of F. J. Wettrick.)

Q. Those marked in red upon the plat you find stakes for? A. Yes, sir. [1361]

Q. You don't know whether any of those stakes are the stakes put there at the time of the issuance of the patent? A. No.

Q. You don't know whether any stake marked in red on any part of this map was there at any time prior to three years ago? A. I do not.

Q. Do you know when the Royal survey was given? A. The date is given upon the map.

Q. Do you know whether that is the correct date or not?

A. No, sir; I have seen the date upon the official plat.

Q. 1891—is that the date given on the official plat?

A. Yes, sir.

Q. You found that tunnel ten feet off—is that right? A. No.

Q. What did you find off—you don't certainly find that stake off, do you?

A. You say you find the tunnel ten feet off. That is not what you find. You find the point to which I measured as the face of the tunnel is ten feet different from the point given by Garside when he measured to the point he called the face of the tunnel—I don't call it off.

Q. When you measure to a tunnel what do you measure to?

A. Why, when I measure to a tunnel, to locate it on an official survey, I usually take the mean between the distance from the point where you com-

(Testimony of F. J. Wettrick.)

mence to break ground and the point where you get under cover—the mean of that is the commencement of the tunnel.

Q. That is how you measured this one—used your regular system in measuring this one?

A. Yes, sir.

Q. And you found it was ten feet further from the stake than [1362] it ought to be?

A. Ten feet less, if I remember correctly.

Q. A difference of ten feet?

A. A difference of ten feet, yes, if I remember correctly.

Q. What lines did you actually run upon the ground that that map is made from, you and Mr. Hill?

A. All the lines you want on the map?

Q. Yes, are they indicated in any way on there?

A. Not exactly, the lines between the red posts here.

Q. The unbroken lines—are not those the ones you actually ran?

A. Not exactly; sometimes it is due to the configuration of the ground you have to traverse.

Q. That is actual surveying on the ground?

A. Yes, sir.

Q. And that is shown by—

A. Post marked in red there.

Q. All the actual surveys you made upon the ground are marked by unbroken lines—is that not true?

A. Yes; some of these were probably connected by traverse due to the configuration of the ground, the topography.

(Testimony of F. J. Wettrick.)

Q. You actually run all three, running a traverse line,—all the lines marked by unbroken lines upon the ground? A. Yes, sir.

Q. And all the lines you did actually run on the ground are platted upon this map by unbroken lines—is not that true?

A. I believe that is true.

Q. See if there are lines you ran actually upon the ground that are not marked on the ground by unbroken lines. If there are, I wish you would tell me what they are. [1363]

A. Yes, there are some marked by broken lines I ran, some between traverse points.

Q. What lines?

A. The line from Corner 2 of the Keystone to 4 of the Webster Millsite.

Q. You ran that?

A. Yes, and also I ran the line from Corner 4 of the Parish No. 2 to corner 3 of Survey 142 and 5 of the Idaho placer, but that is an unbroken line.

Q. That is the only ones of the unbroken lines you actually ran on the ground?

A. Yes, I believe so.

Q. And all other measurements you actually made on the ground with reference to your testimony in this case are marked there by unbroken lines?

A. A tie to the monument is put on by an unbroken line which is run directly on the ground.

Q. That you also ran?

A. Yes; I don't see any more now.

Q. All the other matters to which you have testi-

(Testimony of F. J. Wettrick.)

fied and which you have platted upon this map are merely platted in from the notes you got from the surveyor general's office—is that true?

A. In part, yes; only I found this Lotta claim short on one end 15 feet—in order to preserve the rectangular form I have to make the other end the same, if the stake is not there to tie up to. With reservation I answer your question in the affirmative.

Q. With that reservation all the matters and things to which you have testified, either in direct or cross-examination, as to measurements upon this map or upon the ground, that are [1364] not shown upon that plat and map in unbroken straight lines—I am speaking when I say that plat, of Plaintiff's Exhibit "N"—are platted in with reference to the testimony, and everything else is in reference to the notes found in the surveyor general's office and not based upon actual measurements on the ground?

A. That is about true.

Q. Is it altogether true? If it is not, explain.

A. I mean where you find one side or one end line of a claim slightly short from that given in the field-notes, in order to preserve the rectangular shape, providing the other end line is not long, you have to shorten the other end line proportionately to preserve the rectangular shape.

Q. With the exception of straightening out or changing the line to preserve the rectangular form of the claims, you have all the other information and all the other courses and distances to which you have testified and all the other courses and distances on

(Testimony of F. J. Wettrick.)

exhibit "N," except such as appear in unbroken straight lines and such as you have already referred to, such as the line from the mill monument to the Crown Point corner—you have all that data from the surveyor general's office and is not based upon actual measurements upon the ground?

A. That is true as to the distance—as to the course, having a course at the north end line of the Lotta claim, in order to preserve that course, in order to continue that course my course would have to be preserved and it would not be the surveyor general's course.

Q. The course given by you, then, is the course of the end line of the Taku and the end line of the Keystone and Crown [1365] Point and Golden Fleece, that is the artificial course adopted by you to extend the course given by you on the Lotta?

A. Yes, and connecting up Corner 2 of the Keystone, Corner 6 of the Crown Point and Corner 2 of the Crown Point also—this line is determined by connecting those corners in a straight line.

Q. With that exception you have preserved the courses and distances in the field-notes in this plat?

A. Yes, sir.

Q. With reference to all other measurements, the same holds true, does it not? A. I guess so.

Q. You found a corner of the Idaho placer, corner No. 5—that is in place, is it not—that is a stake there?

A. That was in place last fall, corner No. 5 of the Idaho placer, yes, sir; that is in place.

(Testimony of F. J. Wettrick.)

Q. I will ask you if you did not make an affidavit in this case which reads as follows: Which said post was properly marked; and affiant further continued such survey up the southeasterly end line of the Lotta lode claim and found the southeast corner stake or monument properly set in the ground, all of which monuments, stakes, courses and distances agree with the patent of said Lotta lode claim, and that affiant had with him a copy of the location notice of the Parish #2 lode claim and after obtaining the data above mentioned, easily proceeded to and did run out the boundaries of said Parish No. 2 lode claim and found the two end corner stakes of the said Parish #2 claim and ascertained the lower or southwesterly end line of said Parish #2 claim [1366] which has been brushed out. Did you testify to that?

A. I don't remember whether I testified exactly that way or not.

Q. Didn't you make an affidavit in 823 which reads as follows, as part of this same affidavit: Affiant has this year and within the last two months checked up this work again and found all of the courses, distances, monuments, side and end lines the same as they were when he made the survey in the year 1908 and found the corner posts, monuments, etc., of the Lotta lode claim in identically the same places that the said William M. Ebner describes them in his affidavit. Did you make that affidavit?

A. I don't remember.

Q. You don't know anything about it?

A. I have recollections of making an affidavit

(Testimony of F. J. Wettrick.)

along that line. I don't know whether I did or not. I will soon tell you if you will give me a chance to look at it.

Q. I believe you have already testified that it didn't make any difference what magnetic variation you ran the line on, that doesn't change the course any?

A. The magnetic variation? No, that doesn't change the course any.

Q. It doesn't make any difference? A. No.

Q. The testimony Judge Winn sought to elicit was, it don't make any difference what the magnetic variation is, the course remains the same?

A. No, the magnetic variation has nothing to do with the true course of the line. [1367]

(To follow the second omission on page 137 of the original transcript [printed record, page 285] being a continuation of the cross-examination of Mr. Wettrick by Mr. Hellenthal.)

Q. I will now read to you from what purports to be your original affidavit in Cause 823—this occurs on page 4, about the center of the page—I will show it to you in a minute and you can examine it. All of which monuments and stakes, courses and distances agree with the patent of said Lotta lode claim. Did you so testify?

A. That is my signature on there.

Q. Did you make that affidavit? A. I did; yes.

Q. You also made the other portion of this affidavit wherein you say you checked up the work again and found it still as it had been—I will read it to you: Affiant has this year and within the last two

(Testimony of F. J. Wettrick.)

months checked up this work again and found all of the courses, distances, monuments, side and end lines the same as they were when he made the survey in the year 1908 and found the corner posts, monuments, etc., of the Lotta lode claim in identically the same places that the said William M. Ebner describes them in his affidavit. Is that true?

A. I testified to that, yes, sir.

Afternoon Session.

Q. In answer to questions by Judge Winn this morning, I understood you to say that an assumed magnetic variation, while it would make no difference if you ran your lines with a transit, it would make a difference if the lines were run by a compass?

A. Certainly; the lines of the compass would always be different [1368] from those run by the transit because the compass is not an accurate instrument.

Q. If a survey is made with a transit, it doesn't make any difference what the magnetic variation is—is that it? A. For what purpose?

Q. For the purpose of establishing a line.

A. No.

Q. Not the slightest? A. No.

Q. You use a transit—the way you survey you set up your transit, take an astronomical observation, find the true meridian and turn your angles from that—isn't that the way you do it? A. Exactly.

Q. Pay no attention to the compass whatsoever?

A. Not very much; merely as an additional check.

(Testimony of F. J. Wettrick.)

Q. When you use a compass, then, of course it is essential to know what the magnetic variation is in order to run the line and run the true north?

A. Yes.

Q. If you have the compass and know the magnetic variation, you can run a line according to the true meridian within a reasonable degree of accuracy—not with as much certainty as you can with a transit, but with reasonable accuracy?

A. Yes, sir.

Q. If there is an error in the magnetic variation you assume, it would make a difference in the line that you establish?

A. If you run with a compass, yes, sir.

Q. If you run with a transit, it would not make any difference at all? A. No. [1369]

Q. The only way you can establish a magnetic variation is to compare the needle with the true north? A. Yes, sir.

Q. In order to do that you must use a transit and take an astronomical observation?

A. That is right.

Q. The person who uses a magnetic variation, has a transit and compass both—is that right?

A. Usually he is supplied with a transit and compass, both.

Q. He goes to work and establishes the true north and sees how much that varies from his compass?

A. Yes, sir.

Q. That is what you call your magnetic variation—is that right?

(Testimony of F. J. Wettrick.)

A. Yes, the reading on the compass-box, having a telescope pointing on the true meridian, will give you the magnetic variation, unless if—there is no local attraction.

Q. If you use a transit in surveying the Lotta claim and set up at stake No. 6 and run in accordance with the courses given in the patent, the line you run would vary approximately 2° from the line you show on exhibit “N” as being the line between 5 and 6—is that right?

A. If I determine my true course before I start out, yes.

Q. And used your transit? A. Yes.

Q. The No. 5 would then be located a few feet up from where it is now, further towards No. 3—is that right? Starting from No. 6, I mean.

A. Yes, sir, that is right.

Q. On the other hand, if you use a compass and start at No. 6 [1370] and assume a variation, the variation given in the patent notes to be the correct one, the magnetic variation,—use a compass, not a transit, but a compass and start at Post #6 and run that line, you would run approximately the line you have now delineated on exhibit “N,” not identically the same line?

A. I run the same line as given in the patent notes if I assume the variation. I don’t understand what variation you said to assume. I think you said the variation in the patent, 30° —

Q. Yes.

A. Then, I would run over the same ground that is

(Testimony of F. J. Wettrick.)

delineated on the patent plat and field-notes.

Q. I don't think you got my question exactly. If you should start at Post #6 of the Lotta as you have delineated it upon your map, I mean at the point where the stake is in the ground, use a compass, not a transit, assume the variation given in the patent notes, 30° or whatever it is—if you assume that variation to be the correct one, I understand that variation is not correct at this time. A. No, it is not.

Q. You don't know what the variation was at the time the survey was made? A. No.

Q. It might have been correct, then—there are various changes from time to time? A. Slightly.

Q. If you assume that to be the correct one and start out from Post 6 of the Lotta and run a line by the compass—attempt to run by the compass—the line given in the patent notes it would take you approximately along the same line you are passing over here in going from 6 to 5 and would land you at about stake No. 5? [1371]

A. It would land at stake No. 5.

Q. I wouldn't say within a foot, but about that?

A. Yes, sir.

Q. If a compass were used? A. Yes, sir.

Q. But if a transit were used it would land how many feet above—

A. Using a transit with the same variation it would land you in the same place?

Q. With a true meridian it would land you 2° further up? A. Yes, sir.

Q. With a transit you use the meridian?

(Testimony of F. J. Wettrick.)

A. Yes, sir.

Q. You take an observation of the sun and turn your angles from a true meridian?

A. I do when I make a survey.

Q. That is the way deputy surveyors always do?

A. That is the instructions.

Q. The instructions are, in fact, you have to use a transit? A. Yes, sir.

Q. And have to turn your angles from a true meridian? A. Yes, sir.

Q. Those are the instructions you have in connection with the survey? A. Yes, sir.

(To follow the omission on page 138 of the original transcript [printed record, page 285] as indicated by * * * , being part of the redirect examination of Mr. Wettrick by Judge Winn:)

Q. Mr. Hellenthal has gone into quite a dissertation upon the [1372] use of a transit, magnetic variation, etc. He asked you a long question this morning regarding this exhibit "N" and also asked you to take that map and look over the patent, the property that is in controversy in this case, including the whole bunch of claims mentioned on exhibit "N," and find out whether any one thing at all that was in the patent has a course and distance, etc., that would agree with this exhibit "N," and in that connection, also, he asked you if in running those lines there was not a difference of 2° in the course you took and I think that in the patent—have you any further explanation to make to Mr. Hellenthal's

(Testimony of F. J. Wettick.)

question concerning the matters I have just indicated to you?

A. Yes, I don't believe I was fully understood. I meant to say that if I started at the corner posts as they are upon the ground with my transit and took the variation or the course as given by Mr. Garside in his field-notes and ran the southwesterly side line of the Lotta claim according to the variation and the course given by Garside, arriving at Post 5 and turning the horizontal angle as indicated by him in his field-notes on the official plat, turning that angle according to his own field-notes, I would hit the corner post No. 3 of the Lotta claim, as well as the lode line post No. 4—I would hit it within a very—I would hit the edge of it,—not the centre of it, because the posts were leaning a little bit probably, but I would hit substantially the position the posts are found in. Now, if I take a compass or if I take my transit and take an observation at Corner #6, determine the true north and run over identically the [1373] same line I have run over upon the notes given by Garside, I will find that my record in the note-book will be the courses as I delineated them on the plat between the same posts—I always run between the same posts—and if I turn the angle, not knowing what angle to turn, but turn the angle to accord with the compass, I will turn the same angle as instructed by Garside in his field-notes. Now, having determined by an observation what course I should note in my note-book under that course which he calls 33-45, I would give a slightly different course

(Testimony of F. J. Wettrick.)

upon the ground. It is the same ground, likewise the end line of the Lotta on the ground is the same line, but my notation in the note-book is different, within 2° , from that that Garside chose to put in his note-book; whether he took an observation or not, I don't know—the presumption is he did.

Q. About what is the rule of allowance on the question of the magnetic variation per annum?

Objected to as not the best evidence. Objection overruled. Defendant allowed an exception.

A. The annual difference in variation is different in different sections of the country. Here it is somewhere around five seconds per annum. It changes—it is not constant.

Q. So if you take that general average, why of course you compute the time at which the survey was made down to the present time and it would hardly make up the difference, would it?

A. No, it would not.

Q. Now, Mr. Hellenthal asked you this morning quite extensively about these stakes, as to whether or not you knew that any of these stakes that you found and described were the original stakes, the corner posts that were set by the surveyor [1374] who made the survey for a patent. I will ask you if you saw anything on any of these stakes that led you to believe as a surveyor that all those stakes were the original corner posts or stakes?

Objected to. Sustained. Plaintiff excepts.

Q. I will ask you whether or not—you may state to the Court what marks or indications or anything

(Testimony of F. J. Wettrick.)

you saw upon any of these posts that you found.

A. At corner No. 5 of the Lotta as indicated upon this plat there is a stake 2x4 which was once painted white and upon which there was a black legend painted in black paint. Survey or S. 87, and that stake was rotted off, partly rotted off at the bottom and nailed on alongside. I forget whether it was new or not; it was alongside a larger stake, a 5x5, 2 feet above ground, also painted white. The stake No. 3 had on it the same notation S. 87, that is all I could distinguish, if I remember rightly, but it had on it S. 87; likewise the stake No. 6, which is a 5x5, 2 feet above ground in a mound of rock, had on it S. 87.

Q. I will ask you how the inscriptions that you saw on these posts compare with those that are usually put on corner posts in making surveys for patent—how did they compare with them?

Objected to as incompetent. Overruled. Defendant excepts.

A. It is always required to put upon the corner post the number of the survey and the number of the corner,—that is, if I were making a survey now for patent I would designate that C. 5 S. 87, likewise the others, according to their respective corners. [1375]
(By the COURT.)

Q. Who owns the Forrest lode?

A. That belonged to the Ebner Company.

Q. Who owns the Etta?

A. That is in the same group.

Q. Who owns the Webster Millsite?

(Testimony of F. J. Wettrick.)

A. That belongs to the Ebner Company or the California & Nevada Copper Company, I don't know how the title stands.

Q. Who owns the Royal? A. I don't know.

Judge WINN.—I think those lower claims used to belong to John Maloney and some other people but we understand this company has a bond on them.

The WITNESS.—I am mistaken about the Forrest. It belongs to the Dora Gold Mining Company; the same is true of the Etta—the Etta and Forrest are in the same group of claims. I was mistaken.

(By Judge WINN.)

Q. And the Humboldt at that time used to belong to the Humboldt Gold Mining Company, a corporation? A. Yes, sir.

Q. That is the Webster Millsite and the Humboldt lode referred to here? A. Yes, sir.

Q. And I think the Bluff lode?

A. No, I don't think so—I don't believe so.

Q. You were presented this morning with this affidavit—I don't know just what portion Mr. Hellen-thal read to you—it is on page 4 (handing witness paper). Read over the part you think Mr. Hellen-thal read to you. Read it aloud and if you [1376] have any explanation to make of it, do so.

A. He read to me this: And while he was deputy mineral surveyor make a survey of the lower or southwesterly side line of the Lotta lode mining claim, commencing at a point on the said side line, where the end line of the Forrest lode claim inter-

(Testimony of F. J. Wettrick.)

sects said side line of the said Lotta claim, at which point of intersection affiant found witness post marked S. 87 toward the side of the Lotta and Survey No. 545 toward the side facing the Forrest, and the said lower side line of the Lotta had been brushed out and affiant without any difficulty whatever found the southwest corner post and monument of the Lotta lode claim mentioned in the affidavit of William M. Ebner herein, which said post was properly marked, and affiant continued such survey up the southeasterly end line of the Lotta lode claim and found the southeast corner stake or monument properly set in the ground and marked, all of which monuments and stakes, courses and distances agree with the patent of said Lotta lode claim, and that affiant had with him a copy of the location notice of the Parish No. 2 lode claim and after obtaining the data above mentioned easily proceeded—

Q. That is sufficient—all of which monuments and stakes, courses and distances agreed with the said Lotta lode claim. I will ask you if you have any explanation to make of that?

A. Yes. The language here doesn't exactly convey the exact meaning that I wish to convey and which I have all the time testified to, and that is, the monuments and stakes and courses and distances agreed substantially with the patent of the Lotta lode claim, which they do, and the affidavit was not dictated by me—if the word I have always used, substantially, is omitted, it should be here. [1377]

Q. I believe you stated to Mr. Hellenthal that on

(Testimony of F. J. Wettrick.)

the lower side line of the Lotta, which is between 5 and 3, that according to your actual survey made on the ground there is a difference in that and the measurement given in the patent or the patent field-notes of 15 feet? A. A little less than 15 feet.

(By Mr. HELLENTHAL.)

Q. Who paid you for the work you did in 1900?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Defendant excepts.

Q. What was the explanation you made to Judge Winn in regard to running that southwesterly side line of the Lotta with a compass and with a transit and in making the notations in your note-book, in regard to what you did?

A. I will explain that to you. I believe I explained it about this way—that if I started at Corner No. 6 in the course given by Mr. Garside—

Q. You mean the course given in the plat?

A. 33-45 east, running that course on that line and turning the angle, arriving at corner No. 5 and turning the angle as given by his notes, that I would get the course as given, as he gives it, in the patent field-notes and I would also hit those corners. Now, I said if I go back to that point and make an observation and run over the same line, with my true meridian established by an observation, running over the same line and not knowing what angle to turn, but turning the angle to the post which I found there before, that I would turn the same angle as given by Garside in the field-notes, so that it is merely a

(Testimony of F. J. Wettrick.)

difference as to the notation in the note-book, if you are not very careful [1378] about your meridian; that is to say, that angle would always be a right angle—that angle there is practically a right angle.

Q. However, if you should start at Corner #6, take an observation, run the line according to the true meridian, having taken that observation and used the courses given in the patent, you would not arrive at corner #5, would you?

A. No; if I start just at that one corner and take an observation and run on the course as given in the patent, I would not arrive at that corner.

Q. If you should start at corner No. 5, take an observation, run on the course as given in the patent according to the true meridian, you would not arrive at Corner #3?

By the COURT.—We have been over that.

Q. I want to ask a question with reference to the end lines of the Taku, Keystone, Crown Point and Golden Fleece—the Golden Fleece you didn't survey? A. No, sir.

Q. You did these other lines and found the stakes in the ground marked with red circles?

A. Yes, sir.

Q. If you start at stake No. 2 of the Lotta and use your transit, run the line according to the true meridian and use the course given in the patent, you would not hit any of those stakes that you have marked there with the red circles, would you? A. No, sir.

Q. That would be approximately 2° away from it?

A. Yes, sir.

(Testimony of F. J. Wettrick.)

Q. On the contrary, if you should start at stake No. 2 of the Lotta, use a compass— [1379]

Objected to as repetition.

Q. I want to propound this question: If one would start from corner No. 2 of the Lotta with a compass, use the variation referred to in the patent, run the lines called for in the patent notes of the Taku lode, the Keystone and Crown Point, observing that variation, running the line with a compass, taking the distances there given, would he approximately strike the post that you have indicated by the red circle—with a compass, not with a transit—would he or would he not?

By the COURT.—He may answer.

A. I don't know whether he would or not with a compass. I never used a compass; it depends how accurately you handled the compass. If you will let me explain it in my own way, I will save you time.

Mr. HELLENTHAL.—Go ahead.

A. If I set up at No. 2 as you have referred to it, at No. 1 or No. 6 and taking a variation as 30° , running according to the field-notes of the patent, I would approximately hit all those stakes on the end lines of those claims.

Q. If you ran by the needle?

A. If I ran on a course of 57-16, I believe it is given, with a variation of 30° .

Q. With the needle—by using a needle?

A. Well, that is misleading, by using a needle.

Q. By using a compass?

A. You use your transit just the same.

(Testimony of F. J. Wettrick.)

Q. You mean you would strike those posts approximately if you ran the lines by the compass or a needle, not with a transit but with a compass and used the variations given in the patent and observed the course given in the patent—is that [1380] not right?

A. I don't run it by the compass. I run it by the transit.

Q. But if you did run it by the compass?

A. I don't know what would happen.

Q. What did you do with that 14 feet you missed on the end line of the Lotta, in checking up the ground?

A. I said it substantially checks—practically checks with the stake, corner post, of the Crown Point—falls in where the notes call for, practically, substantially, within a few feet.

Q. Have you your notes? A. No, sir.

Q. Would you mind producing your notes?

A. It would take me some time to prepare it so you could understand it.

Q. How about the end lines, the widths of those other claims, the Taku, the Keystone and the Crown Point—are they substantially as wide as you lay them on the ground here as they are in the patent, within a few feet?

A. Within a few feet, yes—within a limit of error. I don't know exactly what the difference is now. I only know it as to the Lotta; there is a little difference in the other claims, I believe.

Q. How much difference?

(Testimony of F. J. Wettrick.)

A. Something around 15 feet.

Q. They are all off?

A. If one is off, the other would be off.

Q. You think 14 or 15 feet—that is a reasonable check? A. I didn't say a reasonable check.

Q. What would you consider a reasonable check?

A. The instructions of the surveyor general's office gives you [1381] one in a thousand.

Q. Then that would be very reasonable?

A. They don't call it a reasonable check, as considered in the instruction.

(By the COURT.)

Q. You say you located No. 2 of the Crown Point?

A. Yes.

Q. Did you help prepare that plat?

A. Yes, it was prepared in my office.

Q. Does that show what distance Corner No. 2 is from Gold Creek on the side line of the Crown Point and the end line of the Crown Point, where it crosses Gold Creek—from the end line does it show how far Corner No. 2 is from the creek?

A. On the end line? No, I haven't that data, that I know of.

Q. It is your contention that these four claims are all one survey? A. Yes, sir.

Q. You don't know whether it agrees with the plat in the surveyor general's office in regard to that or not—did you ever measure it from that corner of the Crown Point to the creek, down either line?

A. I measured it from the corner of the Crown Point on the side line. I don't know that I have

(Testimony of F. J. Wettrick.)

measured it from the corner of the Crown Point to the centre of the creek there.

Q. What was the distance on the side line, from No. 2 of the Crown Point to the creek?

A. I don't know what it is. I have it in my notes—it is not given on this plat.

Q. Did you ever compare it with the plat in the surveyor general's office to see if that checked with respect to the [1382] creek? A. I did not; no.

Witness excused.

**[Testimony of William M. Ebner, for Plaintiff
(Recalled).]**

(To follow the omission on page 164 of the original transcript [printed record, page 310] indicated by * * * , being part of the direct examination of William M. Ebner (recalled), by Judge Winn.)

Q. (Repeated.) I will ask you, Mr. Ebner, if you have ever seen any corner posts or stakes on the northwesterly end line of the Lotta, Taku lode, Keystone lode, Crown Point lode and Golden Fleece mining claims? A. I have.

Q. When did you first see those corner posts?

Mr. SHACKLEFORD.—We object to all the posts except the posts on the ground that is indicated in the Lotta survey.

Objection overruled. Defendant allowed an exception.

A. The first time I saw any of those posts was in 1891; that is my first recollection and then I saw more of them in 1892.

Q. Can you step over to this map and indicate to

(Testimony of William M. Ebner.)

the Court just what corner post along the end line of those claims you saw first in 1891?

A. Yes, sir, I can.

Q. Point them out and designate them.

Same objection. Objection overruled. Defendant excepts.

A. I saw this post here, which is just opposite the Webster dam, marked here Post No. 6 and the 6 is in the Crown Point lode. I also saw this post just across on the north side of the creek of the present Ebner dam, marked Post No. 2 and [1383] the way I come to see this, we sometimes would take this trail, the old trail, and follow up this flume that was building there and then cross over where the Ebner dam is now and just a little below where the old Coulter dam was—in the same place, in fact.

Q. This corner No. 2 of the Crown Point—you say you have a dam there in the creek? A. Yes, sir.

Q. Or is it near a dam?

A. There was a dam placed there, I think, about the winter of 1896,—the timbers were there last year.

Q. Then, I understand that is not the dam that diverted the water from Gold Creek to the flume, which you carried down and used at the mill—I mean the one at the Crown Point?

A. I thought you meant the other one; that is the present Ebner dam, right there where that is and that is where Coulter built his dam; that is the present Ebner dam on the Golden Fleece.

Mr. SHACKLEFORD.—That is before your time that that was built there, before your dam, the

(Testimony of William M. Ebner.)

Coulter dam? A. Yes, it was before my time.

Mr. SHACKLEFORD.—We move to strike the answer of the witness.

Motion denied. Defendant allowed an exception.

Q. Then, you spoke about some other old dam—that is further up the creek, is it?

A. That is the dam that I put in myself,—that is the one I thought you had reference to. That is not on this plat.

Q. Can you give any description to the Court of what kind of a post you saw there at No. 2 on the Crown Point, which is near the dam on the Golden Fleece? [1384] A. Yes, sir.

Q. Describe it as accurately as you can.

A. I think it is a three by three, white painted post and about 6 or 8 inches above ground.

Q. Have you ever seen any inscription on it?

A. I have.

Q. What did you see?

A. I don't remember.

Q. This is all in 1891 and 1892 you are testifying about? A. Yes, sir.

Q. Could you discern what it was?

A. Not the first time I saw them. I know they were there. I know that post was there, but I couldn't tell what the inscription was now. I did know at the time but I wouldn't want to swear to that now. I knew what it was then; that was in 1891 and 2.

Q. I believe you say you saw some others?

A. More particularly in 1891.

(Testimony of William M. Ebner.)

Q. I have forgotten how many you did mention in '91—did you just mention two?

A. Yes, I mentioned two, that is connected with this. I saw the Webster Millsite post, these two red posts there—this post right here above the road, I remember that, and I remember that was marked 76/B, I know it was marked “B,” and I inquired why it was marked “B” and I found it was in connection with the Humboldt lode—that this was a millsite for the Humboldt lode and was therefore marked “B.”

Q. The Millsite there for the Humboldt never belonged to the Ebner people? A. No. [1385]

Q. The old Richmond or Humboldt or Webster Millsite as it is commonly called—

A. This Millsite lode came here and that is one corner of the Lotta there. The Millsite lode here was afterwards owned about 97 or 98; there was a little fraction in there and it was located by the Humboldt Mining Co.—the Roadway Survey 543.

By the COURT.—Is it tied to the group at all?

Judge WINN.—Yes, sir, it has a common end line.

Q. Does it belong to the Ebner Gold Mining Company—the Roadway? A. No, sir.

Q. What company does that belong to?

A. It belongs to the Dora Gold Mining Company.

Q. You are a stockholder in that company, I believe you testified? A. Yes, sir.

Q. You gave those two now that you saw in '91—

(Testimony of William M. Ebner.)

what about any other of these stakes down the line here?

A. Those I have mentioned are about all I remember now in '91.

Q. Come on down as far as the Lotta now.

A. I saw this one alongside the flume here, this stake on the Crown Point, in 1891. That is the first time I saw that. We came down there, myself and a man named Sanders. As to the Lotta a man named Sid Miller went with me and pointed it out to me.

Q. Outside of the Lotta stakes, did you find any other corner stakes at any other times, in '90 and '91, except those you have described?

A. No, I was not interested sufficiently at that time except by observation I observed these along the Basin road and these that were on the old trail here.

Q. When did you ever see any of these after '90 and '91, along [1386] about that time?

A. I have seen them continually year after year, and more particularly in 1892, myself and some other parties bought what is now called the Dora group, and in that way, in looking where those boundary lines were, is where I became acquainted with this corner, the northwest corner.

Q. That is the Lotta? A. Yes.

Q. Did you ever see any other stakes along on the hillside other than those you have already described

(Testimony of William M. Ebner.)

as being the corner stakes of the Lotta—did you ever see any stakes along there?

A. Not along here, but after we got up here, up on top of the mountain, it is very steep here—

Q. On the Crown Point?

A. Yes, on the Crown Point.

Q. You are pointing to the southerly side line of the Crown Point? A. Yes, sir.

Same objection. Overruled. Defendant excepts.

Q. What stakes did you find there?

A. In 1893 I took Charles Garside and we ran up here and found three stakes here in place, and for the purpose of ascertaining some other matters, we went around an old trail that was up here and came on top here and we found and designated by the marks on it—

Objected to as hearsay. Objection sustained as to what he said.

Q. You put your finger at a corner. I wish you would designate what corner that is. [1387]

A. That is the southeast corner of the Crown Point.

Q. Now, I will ask you, from the different things you have seen, the posts which you have just described in your testimony as being those along what we call the northwesterly end line of the Crown Point, the Keystone and the Taku and those with respect to the Millsite and others you have described—what about their position, have they been in dif-

(Testimony of William M. Ebner.)

ferent places or have you seen them in the same places over these years? A. In the same places.

Judge WINN.—That is all.

[Testimony of H. T. Tripp, for Plaintiff.]

(To follow the omission on page 176 of the original transcript, [printed record, page 324] being part of the direct examination of H. T. Tripp, by Judge Winn.)

Q. That is you found stake Number 5?

A. Yes, sir.

Q. And as indicated on this map, being one of the corner posts of the Lotta lode claim?

A. That was shown to me and called the corner; that is all I know about it.

Q. It is marked a corner on this plat “N”?

A. Yes, sir. Then, we brushed from that out a certain distance, I don’t know how far—I was just there to see what was going on and get a general idea of the lay of the land—I don’t remember the distance but we went out there and we found something there, that was a corner. I don’t remember whether the stake was set or not, but any way we put a stake out there—we carried stakes with us.

Q. You mean to say you re-established that corner and took out the stake there? [1388]

A. That is what we were doing—we had some stakes with us; we piled some rocks up there. I remember about the stake was set, we piled some rocks around it. I can’t remember about the stake that was there, whether there was or not.

(Testimony of H. T. Tripp.)

Q. Did you find a stake there?

A. I don't remember that we found that stake.

[Testimony of Ed Webster, for Plaintiff.]

(To follow the omission on page 238 of the original transcript [printed record, page 391] being part of the direct examination of Ed Webster, by Judge Winn.)

Q. (Repeated.) Just point to this map and tell what stakes you saw. Give them by the numbers you saw set there at that time.

A. This one here (indicating), this—this on one side and two on the other.

Q. Of the Webster Millsite?

A. Yes, on the line with that and this one here—that is just back of our house.

Mr. HELLENTHAL.—We object to this as incompetent, irrelevant and immaterial, having no bearing on the matter in issue and not explaining the location of the Lotta claim.

Objection overruled. Defendant allowed an exception.

Q. The last stake you mentioned as having seen set is the one marked 1 in red ink at the intersection of the southwesterly end line of the Webster Millsite with the Taku lode claim?

A. Yes, this one here—that is just behind our cabin. Our cabin is about there, about 50 feet from this bridge across here and this was marked on the stake there and this was marked.

Q. Is there any particular object nearby this

(Testimony of Ed Webster.)

stake that I [1389] mentioned to you, at the intersection of the line of the Webster Millsite with the upper end line of the Taku lode that makes you remember where it was located? I mean that one (indicating).

A. That is just behind our cabin on the little knoll that slopes up—it is in plain sight—it was there for years.

Q. And up to about what time do you remember that being there?

A. I left there in 1898—we sold the mine then and I left there.

Q. Was there any other stake or stakes there along the upper end line of the Webster property, along there on the Keystone or Crown Point?

Mr. HELLENTHAL.—This is all objected to as immaterial.

Objection overruled. Defendant allowed an exception.

A. This one here was right opposite our dam—our dam was right here. This sets on the bank and there was a stake for the intersection of the Crown Point and Taku. Those are the only ones I know anything about in the lode claim. We always called them the Taku Consolidates.

(To follow the omission on page 240 of the original transcript [printed record, page 393] indicated by * * * being part of Ed Webster's direct examination by Judge Winn.)

Q. Do you remember the relative location of the

(Testimony of Ed Webster.)

stake marked 2 and 6 in red ink, which is the common stake between the Crown Point and Keystone at the upper end of the line?

A. Yes, this one here, these two and this is just above the old Thorp dam on the hillside.

Q. And about what distance from the three corner posts you spoke about which are on the northeast end line of the Millsite lode? [1390]

A. I couldn't say just exactly what distance there was. I never measured that.

(To follow the omission of page 241 of the original transcript [printed record, page 394] as indicated by * * * , being part of the cross-examination of Ed Webster by Mr. Hellenthal.)

Q. (Repeated.) Do you remember his setting up the transit on the different posts and sighting along the lines?

A. Yes; I was right along with him when he done the lines.

Q. You know he used a transit in making the survey, an ordinary transit?

A. Yes, surveying instruments he used.

Q. The stake you remember him sighting is indicated on this map as being the common stake of the Keystone and Crown Point, adjoining the northerly end lines—the common stake adjoining the northerly end lines of the Keystone and Crown Point—is that the stake? A. Yes.

Q. And that stake you say was set—you remember

(Testimony of Ed Webster.)

the location of that stake from its relative position to your dam? A. Yes, sir.

Q. That is the same dam that is now used?

A. No, the same dam that was used by the Humboldt people.

Q. How far from the dam did that stake set?

A. Well, I couldn't exactly say.

Q. I mean approximately?

A. Oh, it is quite a little distance up, just on the slope of the hill, on the creek up on the side.

Q. How many feet horizontal measurement?

A. It may be 90 or 100 feet—something like that—from the creek. [1391]

Q. When you say 90 or 100 feet, do you mean measuring along the surface of the ground or do you mean that far horizontal measurement? The mountain is pretty steep.

A. I couldn't say positively how far it was. I am guessing at that; I never measured it.

Q. It wasn't any further than that, anyhow?

A. I wouldn't say any further; it might be, though.

Q. It wasn't much further or much less?

A. Somewheres along there.

Q. Between 90 and 100 feet? A. Yes, sir.

Q. And that was in what direction from your dam?

A. It would be in a northeast direction, I should say, from that—it is up the creek above the dam.

